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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

**FORM 10-K**

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2022  
OR  
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_ to \_\_\_\_  
Commission File Number: 001-38098



**APIAN CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

7950 Jones Branch Drive  
McLean, VA  
(Address of principal executive offices)

54-1956084  
(I.R.S. Employer Identification No.)

22102  
(Zip Code)

Registrant's telephone number, including area code: (703) 442-8844

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock	APPN	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant’s executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of June 30, 2022, the aggregate market value of the registrant’s voting Class A common stock and Class B common stock held by non-affiliates of the registrant was \$1,025.3 million and \$95.6 million, respectively, based on a closing price of \$47.36 per share of the registrant’s Class A common stock as reported on The Nasdaq Global Market on June 30, 2022. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

As of February 13, 2023, there were 41,338,629 shares of the registrant’s Class A common stock and 31,497,596 shares of the registrant’s Class B common stock, each with a par value of \$0.0001 per share, outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

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## PART I

### Item 1. Business.

#### Overview

Appian Corporation (together with its subsidiaries, “Appian,” “the Company,” “we,” or “our”) provides a process automation platform that helps organizations unleash digital innovation and drive efficiency. Appian was founded on the optimistic premise that when given a platform to do so, people will embrace the opportunity to transform the way they work. We combine people, technologies, and data in end-to-end processes that maximize our customers' resources and dramatically improve business results.

Our unified platform for process automation is a key differentiator in the marketplace. Today, we are one of the only enterprise software vendors that offer Workflow, Artificial Intelligence, or AI, Robotic Process Automation, or RPA, Data Fabric, and Process Mining in one fully integrated low-code platform. The result is a platform that makes it easier and faster to address complex use cases, particularly those that involve multiple departments within an organization and their external customers and vendors.

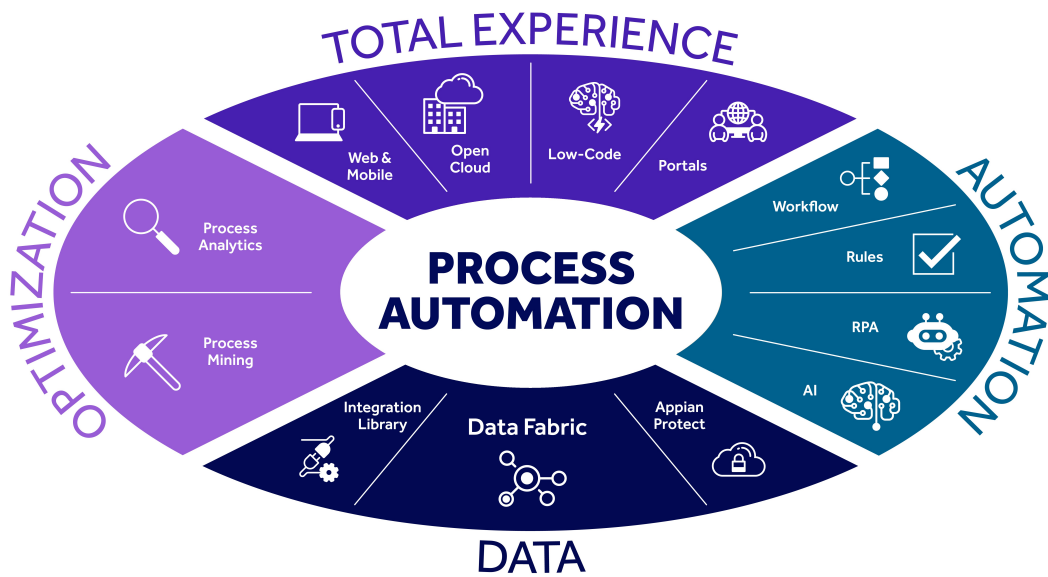
Organizations across all industries are digitally transforming by leveraging software to automate and optimize mission-critical operations, enhance customer experiences, and drive competitive differentiation. Historically, organizations have relied on off-the-shelf packaged software and custom software solutions to operationalize and automate their businesses. Packaged software often fails to address unique use cases or to enable differentiation. It also requires organizations to adapt their business (processes, systems of record, etc.) to the software package, as opposed to adapting the software to their unique business needs. While traditional custom software solutions can be differentiated and tailored to meet strategic objectives, development requires a long, iterative, and cumbersome process, as well as costly integration that relies on scarce developer talent. Our platform greatly reduces the iterative development process, allowing for real-time optimization and ultimately shortening the time it takes to design, build, and deploy applications.

Our go-to-market strategy consists of both direct sales and sales through strategic partners. We sell our software almost exclusively through subscriptions. We intend to grow our revenue both by adding new customers and increasing the number of users or applications built on our platform at existing customers. Our strategic partners include industry-leading global system integrators, software vendors, and cloud and technology providers. We intend to continue to invest in our partner ecosystem, with a particular emphasis on expanding our strategic alliances and cloud-focused partnerships with global system integrators.

#### The Appian Platform

Our platform is the only fully integrated automation platform that enables organizations to transform the way they work, allowing them to design, automate, and optimize end-to-end processes and complex business operations. Global organizations use the Appian Platform to improve customer and employee experiences, achieve operational excellence, and simplify global risk management and compliance.

We believe effective processes are at the heart of highly successful organizations. Appian helps our customers master and scale up their unique business processes. Our platform allows organizations to deliver excellent customer experiences, maximize operational efficiency, and effortlessly ensure compliance with laws and regulations. We provide a unified platform with the capabilities our customers need to quickly achieve process excellence. These capabilities include a unified toolset for data, process automation, total experience, and process optimization that supports data-driven decision-making, enhanced customer experiences, and optimized processes for maximum efficiency and effectiveness.



**Automation**

Our platform provides a comprehensive range of native automation capabilities that enable our customers to streamline their operations. The Appian Process Modeler allows organizations to connect customers, employees, systems, AI, and software robots in end-to-end processes for complete control over business operations. Our business rules technology allows organizations to encode and enforce policies and routing decisions that reduce risk, while our native RPA and AI enable organizations to automate process steps to deliver greater efficiency and increase customer and employee satisfaction. We sell our platform as a unified set of automation technologies that accelerates customer implementation times and return on investment.

**Data Fabric**

Our patented data fabric architecture delivers an innovative solution, enabling organizations to make informed decisions and intelligently route processes from a 360-degree view of business operations. The architecture comprises an extensive library of integration adapters to enterprise systems that integrate previously siloed data into a single, powerful data fabric. In addition, the secure infrastructure of our data fabric architecture provides a safe environment for storing and handling sensitive information, ensuring that confidential data remains protected. The unique and patented design of our data fabric architecture sets it apart from other solutions on the market, providing organizations with a comprehensive platform for making data-driven decisions and optimizing workflows through intelligent process routing and gaining a complete view of their business operations.

**Total Experience**

Our complete platform further extends our customers’ ability to engage external and internal users in a total experience that merges the customer journey with the employee experience. Our patented Self-Assembling Interface Layer, or SAIL, technology and utilization of low-code design allow our customers to quickly create dynamic and intuitive user experiences and deploy them across web and mobile devices. Our customers then use our platform to seamlessly engage users with their business processes across digital touchpoints, such as Internet of things, or IoT, devices, chatbots, or virtual personal assistants, no matter where they are located.

## **Optimization**

Our integrated process analytics and mining capabilities enable customers to measure and track their process performance accurately. With this functionality, our customers gain a deeper understanding of their business operations and pinpoint areas for improvement. Using this data, customers can drive continuous process improvement and optimize their processes for maximum efficiency and effectiveness. These features provide customers with the necessary insights to make informed decisions and optimize their operations to meet the evolving needs of their business.

## **Go-to-Market Strategy**

Our go-to-market strategy consists of both direct sales and sales through strategic partners. We sell our software almost exclusively as subscriptions. We intend to grow our revenue by adding new customers, increasing the product usage of existing customers, and expanding product usage across new business processes and applications. Our strategic partners work with organizations undergoing digital transformation projects, and when they recognize an opportunity for our platform, they often introduce us to potential customers.

Many of our customers begin by building a single application and grow to create dozens of applications on our platform, which implicitly increases their return on investment. Generally, the development of new applications results in the expansion of our product usage within an organization and a corresponding increase in our revenue due to subscription fees. Every additional application an organization creates on our platform increases the value of our platform for that organization because it further integrates people, processes, and data and facilitates knowledge sharing. Applications built on our platform may be used only on our platform and only while customers have active subscriptions, creating a substantial incentive for customers to avoid the difficulties and costs associated with moving to a different software platform. At the same time, our industry-leading Customer Success team helps customers to build and deploy applications on our platform to achieve their digital transformation goals more quickly.

## **Our Growth Strategy**

Key elements of our growth strategy include:

- **Expand our customer base.** We continue to grow our customer base in various industries, including financial services, government, life sciences, insurance, manufacturing, energy, healthcare, telecommunications, and transportation. We believe the market for our platform is still in its early stages, and we have a significant opportunity to add additional large enterprise and government customers globally. We offer the Appian Community Edition, a free trial platform with guided learning for our prospects and customers to quickly access the Appian Platform for up to 15 users. Once prospects or customers decide to move forward from trial to transaction, they can transfer from the Appian Community Edition over to a production environment with a seamless export.
- **Grow revenue from key industry verticals.** While our platform is industry-agnostic, we continue to make investments to enhance the expertise of our sales and marketing organization within our key industry verticals of financial services, government, insurance, and life sciences. In 2022, we generated over 71% of our subscriptions revenue from customers in these verticals. We believe focusing on the digital transformation needs of organizations within these industry verticals helps drive adoption of our platform.
- **Continue to innovate and enhance our platform.** We continue to invest in research and development to strengthen our platform and expand the number of features available to our customers. We offer multiple upgrades each year that allow our customers to benefit from ongoing innovation. As we continue to increase the functionality of our platform and further reduce the amount of developer skill required to quickly deliver value for our customers, we believe we have the potential to expand the use of our platform.
- **Offer industry solutions to accelerate customer usage.** Our platform enables our customers to build applications quickly. Appian and our partners offer pre-built solutions in certain of our key industries such as financial services, government acquisition, and insurance to give our customers an even faster start. Every Appian solution is built on our platform and designed to be standardized, upgradeable, and compatible with each other.

- **Expand our international footprint.** Our platform is designed to be natively multilingual to facilitate collaboration and address challenges in multinational organizations. Appian Cloud meets the data residency requirements of our global customers by operating in 15 countries across 31 regions and 99 availability zones. In 2022, approximately 34% of our total revenue was generated from customers outside of the United States. As of December 31, 2022, we were operating in 15 countries, and we believe we have a significant opportunity to continue to grow our international footprint. We are investing in new geographies through direct and indirect sales channels, professional services and customer support, and implementation partners.
- **Grow our partner base.** We have strategic partnerships including with KPMG, Accenture, PwC, EY, Infosys, Wipro, and Deloitte. These partners work with organizations undergoing digital transformation projects. When they recognize an opportunity for our platform, they introduce us to potential customers. Additionally, they leverage pre-built solutions using our platform, delivering software license revenue to Appian. We intend to further grow our base of partners to provide broader customer coverage and solution delivery capabilities.

## Sales and Marketing

### *Sales*

Our sales organization is responsible for account acquisition and overall market development, which includes managing relationships with our customers. We also sell our software through our strategic partners. While our platform is industry-agnostic, we continue to make investments to enhance the expertise of our sales organization within our core industry verticals of financial services, government, insurance, and life sciences. We expect to continue to grow our sales headcount in all of our principal markets and expand into countries where we currently do not have a direct sales presence. We also intend to expand our partner base to provide broader customer coverage and solution delivery capabilities.

### *Marketing*

Our marketing efforts focus on building our brand reputation and increasing market awareness of our platform. Marketing activities include sponsorship of, and attendance at, trade shows and conferences; our annual Appian World, Appian Europe, and Appian Asia, Pacific, and Japan conferences; social media, advertising, and other digital programs; management of our corporate website and partner portal; press outreach; and customer relations. As global concerns about the COVID-19 pandemic decline, we plan to responsibly increase the number of in-person marketing events as compared to 2020 through 2022.

### *Partner Strategy*

We have a strong and growing ecosystem of partners that helps accelerate our customers' digital transformation initiatives and deliver customer value at scale. Our platform's ability to design, automate, and optimize end-to-end processes, and our partners' industry and functional domain experience help organizations digitally transform their businesses. Partners also allow us to offer industry-focused solutions that help our joint customers deliver end-to-end process control for crucial business functions.

We have strategic partnerships around the world including with companies such as KPMG, Accenture, PwC, EY, Infosys, Wipro, and Deloitte. These partners refer software subscription customers to us and generally perform professional services with respect to any new service contracts they originate, increasing our subscription revenue without any change to our professional services revenue. We expect professional services revenue to decline as a percentage of total revenue over time, since our growing strategic partner network may perform more of the professional services associated with our software subscriptions.

We are also growing our network of regional and channel partners further to expand our business into traditional and new markets. These partners provide delivery services, sales and marketing capabilities, and contract fulfillment.

## Research and Development

Our ability to compete depends in large part on our continuous commitment to research and development and our ability to introduce new pre-built solutions, technologies, features, and capabilities in a timely manner. Our research and development organization is responsible for the design, development, testing, and release of our solutions and platform's new technologies,

features and integrations. Our efforts are focused on developing new products and core technologies and further enhancing the functionality, reliability, performance, and flexibility of existing capabilities. We focus our efforts on anticipating customer demand in bringing new products and new versions of existing products to market in order to remain competitive in the marketplace. We plan to continue to invest in research and development to broaden and expand our platform capabilities.

## **Human Capital Resources and Management**

### ***Employees, Culture, and Labor Relations***

Our distinct culture of innovation is an important contributor to our success as a company. We promote an inclusive environment where our employees can contribute their unique perspectives to help create transformative solutions for our customers. Our culture was purposefully cultivated by our four founders, who are still heavily involved in operating our business, including recruiting, interviewing, and educating new employees at Appian. Led by Matt Calkins, one of our founders and our Chief Executive Officer, we have grown our business organically by employing a unified team to maximize the cohesion and simplicity of our platform and our company.

We respect all people. We believe diversity of ideas and an inclusive environment are paramount to our continued success. We also believe our individual experiences, knowledge, and ways of working enable us to learn from one another and be innovative. We sponsor several affinity groups, initiated by employees, that aim to build stronger internal and external networks and partnerships, create a positive lasting impact through social and educational outreach, and create development opportunities for future leaders.

As of December 31, 2022, we had a total global workforce of 2,307 full-time employees, 1,668 of which were based in the United States. None of our U.S. employees are covered by collective bargaining agreements. We believe our employee relations are good, and we have not experienced any work stoppages. Additionally, we are subject to, and comply with, local labor law requirements in all countries in which we operate.

### ***Talent Acquisition and Development***

We have a robust talent acquisition program to attract, recruit, and retain new talent. We utilize an extensive campus recruiting program, provide an employee referral program, and offer opportunities for internal transfers, and competitive compensation and benefits programs. We also provide resources to help our employees grow in their current roles and build new skills, including access to Appian University, a system that houses Appian's in-house learning and development solutions.

### ***Inclusion and Diversity***

We respect all people. We believe diversity of ideas and an inclusive environment are paramount to our continued success. We also believe our individual experiences, knowledge, and ways of working enable us to learn from one another and discover creative solutions. We sponsor a number of affinity groups, initiated by employees, that aim to build stronger internal and external networks and partnerships, create a positive lasting impact through social and educational outreach, and create development opportunities for future leaders.

## **Facilities**

As of December 31, 2022, we lease our headquarters office in McLean, Virginia, and we also have four leased offices in cities outside the United States. In addition to our leased offices, we occupied seven flexible workspaces outside of the United States. Our use of flexible workspaces is dependent upon our current business needs. We believe our facilities are adequate to meet our ongoing needs, including substantial rights to expand within certain properties we lease. If we require additional space in the future, we believe we will be able to obtain additional facilities on commercially reasonable terms.

## **Our Customers**

Our customers operate in various industries, including financial services, government, life sciences, insurance, manufacturing, energy, healthcare, telecommunications, and transportation. As of December 31, 2022, we had 925 customers, of which 712 customers were commercial and 213 customers were government or non-commercial entities. Generally, our sales



team targets its efforts to organizations with over 2,000 employees and \$2 billion in annual revenue. The number of customers paying us in excess of \$1 million of annual recurring revenue has grown from 75 at the end of 2021 to 94 at the end of 2022. No single end customer accounted for more than 10% of our total revenue in 2022, 2021, or 2020.

## **Our Competition**

Our main competitors fall into three categories: (1) providers of custom software solutions that address, or are developed to address, some of the use cases that applications developed on our platform target; (2) providers of low-code development platforms such as Microsoft, Salesforce.com, ServiceNow, OutSystems, and Mendix; and (3) providers of one or more automation technologies, including business process management, case management, process mining, and robotic process automation. Such providers include Pegasystems, Celonis, UiPath, SAP, and Oracle.

As our market grows, we expect it will attract more highly specialized vendors as well as larger vendors that may continue to acquire or bundle their products more effectively. The principal competitive factors in our market include:

- Platform features, reliability, performance, and effectiveness;
- Ease of use and speed;
- Platform extensibility and ability to integrate with other technology infrastructures;
- Deployment flexibility;
- Robustness of professional services and customer support;
- Price and total cost of ownership;
- Strength of platform security and adherence to industry standards and certifications;
- Strength of sales and marketing efforts; and
- Brand awareness and reputation.

We believe we generally compete favorably with our peer group with respect to the features, security, and performance of our platform, the ease of integration of our applications, and the relatively low total cost of ownership of our applications. However, many of our competitors have substantially greater financial, technical, and other resources, greater name recognition, larger sales and marketing budgets, broader distribution, more diversified product lines, and larger and more mature intellectual property portfolios.

## **Intellectual Property**

Our success depends in part upon our ability to protect our core technology and intellectual property. We rely on patents, trademarks, copyrights, trade secret laws, confidentiality procedures, and employee disclosure and invention assignment agreements to protect our intellectual property rights.

As of December 31, 2022, we had 11 granted patents and six patents pending related to our platform and its technology. None of our issued patents expire before 2034. We cannot provide complete assurance that any of our patent applications will result in the issuance of a patent or that the examination process will not require us to narrow our claims. Any patents we may be issued may be contested, circumvented, found unenforceable, or invalidated, and we may not be able to prevent third parties from infringing them. We also license software from third parties for integration into our products, including open source software and other software available on commercially reasonable terms. We control access to and use of our proprietary software and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, end customers, and partners, and our software is protected by U.S. and international copyright and trade secret laws.

## **Corporate Information**

Our Class A common stock is listed on the Nasdaq Global Market under the symbol “APPN”.

Our corporate headquarters is located at 7950 Jones Branch Drive, McLean, Virginia 22102, and our telephone number is (703) 442-8844.

“Appian,” the Appian logo, and other trademarks or service marks of Appian Corporation appearing in this Annual Report on Form 10-K are the property of Appian Corporation. This Annual Report on Form 10-K contains additional trade names, trademarks, and service marks of others, which are the property of their respective owners. Solely for convenience, trademarks and trade names referred to in this Annual Report on Form 10-K exclude the ® or TM symbols.

### Available Information

Our website address is [www.appian.com](http://www.appian.com). Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act are made available free of charge on or through our website at [investors.appian.com](http://investors.appian.com) as soon as reasonably practicable after such reports are filed with, or furnished to, the United States Securities and Exchange Commission, or SEC. The information contained on, or that can be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our website are intended to be inactive textual references only.

### Forward-Looking Statements

This Annual Report on Form 10-K, including the sections entitled “Business,” “Risk Factors,” and “Management's Discussion and Analysis of Financial Condition and Results of Operations,” contains forward-looking statements that involve known and unknown risks, uncertainties, and other factors that may cause our actual results, levels of activity, performance, or achievements to be materially different from the information expressed or implied by these forward-looking statements. Statements that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. In some cases, forward-looking statements can be identified by the words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “objective,” “ongoing,” “plan,” “predict,” “project,” “potential,” “should,” “will,” or “would,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These forward-looking statements include, but are not limited to, statements concerning the following:

- Our market opportunity and the expansion of our core software markets in general;
- The effects of increased competition as well as innovations by new and existing competitors in our market;
- Our ability to adapt to technological change and effectively enhance, innovate, and scale our platform and professional services;
- Our ability to effectively manage or sustain our growth and to achieve profitability;
- Potential acquisitions and integration of complementary businesses and technologies;
- Our ability to maintain, or strengthen awareness of, our brand;
- Perceived or actual problems with the integrity, reliability, quality, or compatibility of our platform, including unscheduled downtime or outages;
- The anticipated expansion of the usage of partners to perform professional services;
- General macroeconomic conditions, including rising interest rates and inflation, slower growth or recession, and geopolitical turmoil;
- Future revenue, hiring plans, expenses, capital expenditures, capital requirements, and stock performance;
- Our ability to attract and retain qualified employees and key personnel and manage our overall headcount;
- The expected benefits to our clients and potential clients of our product and service offerings;

- The timing of revenue recognition under license and cloud arrangements;
- Our expectation that subscriptions revenue as a percentage of total revenue will continue to increase;
- Our backlog of license, maintenance, cloud, and services agreements and the timing of future cash receipts from committed license and cloud arrangements;
- Our expectation that cost of revenue, sales and marketing expenses, research and development expenses, and general and administrative expenses will continue to increase in absolute dollar values;
- The fluctuation of subscriptions gross margin and professional services gross margin over time;
- Our expectations regarding the impact of recent accounting pronouncements on our consolidated financial statements;
- Our ability to stay abreast of new or modified laws and regulations that currently apply or become applicable to our business both in the United States and internationally;
- Our ability to maintain, protect, and enhance our intellectual property; and
- Costs associated with defending intellectual property infringement and other claims.

These statements represent the beliefs and assumptions of our management based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties, and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled “Risk Factors” included under Part I, Item 1A. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances that occur after the date of this report.

### **Risk Factors Summary**

The risk factors summarized below could materially harm our business, operating results, and/or financial condition, impair our future prospects, and/or cause the price of our common stock to decline. These risks are discussed more fully in the section titled “Risk Factors”. Material risks that may affect our business, financial condition, results of operations, and trading price of our Class A common stock include, but are not necessarily limited to, the following:

- Our recent growth may not be indicative of our future growth and, if we continue to grow, we may not be able to manage our growth effectively.
- If we are unable to sustain our revenue growth rate, we may not achieve or maintain profitability in the future.
- We may not be able to scale our business quickly enough to meet our customers’ growing needs, and if we are not able to grow efficiently, our operating results could be harmed.
- We are dependent on a single product, and the lack of continued market acceptance of our platform could cause our operating results to suffer.
- Market adoption of low-code platforms to drive digital transformation is new and unproven and may not grow as we expect, which may harm our business and prospects.
- We currently face significant competition.
- If our security measures are actually or perceived to have been breached or unauthorized access to our platform or customer data is otherwise obtained, our platform may be perceived as not being secure, customers may reduce the use of or stop using our platform, and we may incur significant liabilities.
- We derive a material portion of our revenue from a limited number of customers, and the loss of one or more of these customers could adversely impact our business, results of operations, and financial condition.
- We rely on the performance of highly skilled personnel, including senior management and our engineering, professional services, sales, and technology professionals.
- If we do not continue to innovate and provide a platform that is useful to our customers, we may not remain competitive, and our revenue and operating results could suffer.

- We are substantially dependent upon customer renewals, the addition of new customers, and the continued growth of our subscriptions revenue.
- Because we generally recognize revenue from cloud subscriptions ratably over the term of the subscription agreement, near term changes in sales may not be reflected immediately in our operating results.
- We rely upon Amazon Web Services, or AWS, to operate our cloud offering; any disruption of or interference with our use of AWS would adversely affect our business, results of operations, and financial condition.
- We employ third-party licensed software for use in or with our software, and the inability to maintain these licenses or errors in the software we license could result in increased costs or reduced service levels, which would adversely affect our business.
- If we do not or cannot maintain the compatibility of our platform with third-party applications that our customers use in their businesses, our revenue will decline.
- Because our software could be used to collect and store personal information, domestic and international privacy concerns could result in additional costs and liabilities to us or inhibit sales of our software.
- If our platform fails to function in a manner that allows our customers to operate in compliance with regulations and/or industry standards, our revenue and operating results could be harmed.
- We are subject to anti-corruption laws with respect to our domestic and international operations.
- We are subject to governmental export and import controls and economic and trade sanctions that could impair our ability to conduct business in international markets and subject us to liability if we are not in compliance with applicable laws and regulations.
- Any failure to protect our proprietary technology and intellectual property rights could substantially harm our business and operating results.
- Portions of our platform utilize open source software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.
- If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.
- Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.
- The dual class structure of our common stock and the existing ownership of capital stock by Matt Calkins, our founder and Chief Executive Officer, has the effect of concentrating voting control with Mr. Calkins for the foreseeable future, which will limit the ability of others to influence corporate matters.
- Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management, and limit the market price of our Class A common stock.
- Our stock price may be volatile, and investors may lose some or all of their investment.

## Item 1A. Risk Factors.

*Our operations and financial results are subject to various risks and uncertainties including those described below and other information contained in this Annual Report on Form 10-K. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties we are unaware of, or we currently believe are not material, may also become important factors that adversely affect our business. If any of the following risks or others not specified below materialize, our business, financial condition, and results of operations could be materially and adversely affected, and the trading price of our Class A common stock could decline.*

### **Risks Related to Our Business and Industry**

***Our recent growth may not be indicative of our future growth and, if we continue to grow, we may not be able to manage our growth effectively.***

We have experienced rapid growth in our headcount and operations. We have also significantly increased the size of our customer base over the last several years. While we have expanded our operations and headcount in prior periods, it is not indicative of our future growth and we may modify our pace of hiring to align with our growth plans. Our growth has placed, and any future growth will place, a significant strain on our management, administrative, operational, and financial infrastructure. Our success will depend in part on our ability to manage this growth effectively and we will need to continue to improve our operational, financial, and management controls and our reporting systems and procedures. Failure to effectively manage our growth could result in difficulty or delays in deploying our platform to customers, declines in quality or customer satisfaction, increases in costs, difficulties in introducing new features, or other operational difficulties. Any of these difficulties could adversely impact our business performance and results of operations.

***If we are unable to sustain our revenue growth rate, we may not achieve or maintain profitability in the future.***

We have experienced revenue growth with revenue of \$468.0 million, \$369.3 million, and \$304.6 million in 2022, 2021, and 2020, respectively. Although we have experienced rapid revenue growth historically, we may not continue to grow as rapidly in the future, and our revenue growth rates may decline. Any success we may experience in the future will depend in large part on our ability to, among other things:

- Maintain and expand our customer base;
- Increase revenue from existing customers through increased or broader use of our platform within their organizations;
- Further penetrate the existing industry verticals we serve and expand into other industry verticals; and
- Continue to successfully expand our business domestically and internationally.

If we are unable to maintain consistent revenue or revenue growth, our stock price could be volatile, and it may be difficult to achieve and maintain profitability. Our revenue for any prior quarterly or annual periods should not be relied upon as any indication of our future revenue or revenue growth.

***We may not be able to scale our business quickly enough to meet our customers' growing needs, and if we are not able to grow efficiently, our operating results could be harmed.***

As usage of our platform grows and as customers use our platform for more advanced and more frequent projects, we may need to devote additional resources to improving our software architecture, integrating with third-party systems, and maintaining infrastructure performance. In addition, we will need to appropriately scale our internal business operations as well as grow our partner services systems, including our Customer Success organization and operations, to serve our growing customer base, particularly as our customer base expands over time. Any failure of or delay in these efforts could cause impaired system performance and reduced customer satisfaction. These issues could reduce the attractiveness of our platform to customers, resulting in decreased sales to new customers, lower renewal rates by existing customers, the issuance of service credits, or requested refunds, any of which could hurt our revenue growth and our reputation. Even if we are able to upgrade our systems and expand our staff, any such expansion will be expensive and complex, requiring management time and attention. We could also face inefficiencies or operational failures as a result of our efforts to scale our infrastructure. Moreover, there are inherent risks associated with upgrading, improving, and expanding our information technology systems. We cannot

be sure the expansion and improvements to our infrastructure and systems will be fully or effectively implemented on a timely basis, if at all. These efforts may reduce revenue and our margins and adversely impact our financial results.

***We are dependent on a single product, and the lack of continued market acceptance of our platform could cause our operating results to suffer.***

Sales of our software platform account for substantially all of our subscriptions revenue and are the source of substantially all of our professional services revenue. We expect we will be substantially dependent on our platform to generate revenue for the foreseeable future. As a result, our operating results or revenue growth rates could suffer due to:

- Any decline or lower than expected growth in demand for our platform;
- The failure of our platform to achieve continued market acceptance;
- The market for low-code solutions not continuing to grow or growing more slowly than we expect;
- The introduction of products and technologies that serve as a replacement or substitute for, or represent an improvement over, our platform;
- Technological innovations or new standards that our platform does not address;
- Sensitivity to current or future prices offered by us or competing solutions;
- The inability to further penetrate our existing industry verticals or expand our customer base; and
- Our inability to release enhanced versions of our platform on a timely basis.

***Our sales cycle is long and unpredictable, particularly with respect to large customers, and our sales efforts require considerable time and expense, all of which may cause our operating results to fluctuate.***

Our operating results may fluctuate, in part, because of the resource-intensive nature of our sales efforts, the length and variability of the sales cycle of our platform, and the difficulty we face in adjusting our short-term operating expenses. Our operating results depend in part on sales to large customers and promotion of increasing usage by those large customers. The length of our sales cycle, from initial evaluation to delivery of and payment for our software, varies substantially from customer to customer, and it is difficult to predict if or when we will make a sale to a potential customer. We may spend substantial time, effort, and money on our sales and marketing efforts without any assurance our efforts will result in revenue. As a result of these factors, we may face greater costs, longer sales cycles, and less predictability in the future. In the past, certain individual sales have occurred in periods later than we expected or have not occurred at all. The loss or delay of one or more large transactions in a quarter could impact our operating results for that quarter and any future quarters in which such revenue otherwise would have been recognized because a substantial portion of our expenses are relatively fixed in the short-term. As a result of these factors, it is difficult for us to forecast our revenue accurately in any quarter, and our quarterly results may fluctuate substantially.

***Market adoption of low-code platforms to drive digital transformation is new and unproven and may not grow as we expect, which may harm our business and prospects.***

We believe our future success will depend in large part on growth in the demand for low-code platforms to drive software-enabled digital transformation. It is difficult to predict customer demand for our platform, renewal rates, the rate at which existing customers expand their subscriptions, the size and growth rate of the market for our platform, the entry of competitive products, or the success of existing competitive products. The utilization of low-code software to drive digital transformation is still relatively new. Any expansion in our addressable market depends on a number of factors, including businesses continuing to desire to differentiate themselves through software-enabled digital transformation, increasing their reliance on low-code solutions, changes in the competitive landscape, technological changes, budgetary constraints of our customers, and changes in economic conditions. If our platform does not achieve widespread adoption or there is a reduction in demand for low-code solutions caused by these factors, it could result in reduced customer purchases, reduced renewal rates, and decreased revenue, any of which will adversely affect our business, operating results, and financial condition.

***We currently face significant competition.***

The markets for low-code platforms, business process management, case management software, and custom software are highly competitive, rapidly evolving, and have relatively low barriers to entry. The principal competitive factors in our market include the following: platform features, reliability, performance, and effectiveness; ease of use and speed; platform extensibility and ability to integrate with other technology infrastructures; deployment flexibility; robustness of professional services and customer support; price and total cost of ownership; strength of platform security and adherence to industry standards and certifications; strength of sales and marketing efforts; and brand awareness and reputation. If we fail to compete effectively with respect to any of these competitive factors, we may fail to attract new customers or lose or fail to renew existing customers, which would cause our operating results to suffer.

Our main competitors fall into three categories: (1) providers of custom software and customer software solutions that address, or are developed to address, some of the use cases that can be addressed by applications developed on our platform; (2) providers of low-code development platforms such as Microsoft, Salesforce.com, ServiceNow, OutSystems, and Mendix; and (3) providers of one or more automation technologies, including BPM, case management, process mining, and RPA. Such providers include Pegasystems, Celonis, UiPath, Microsoft, SAP, and Oracle.

Some of our actual and potential competitors have advantages over us such as longer operating histories, more established relationships with current or potential customers and commercial partners, significantly greater financial, technical, marketing, or other resources, stronger brand recognition, larger intellectual property portfolios, and broader global distribution and presence. Such competitors may make their solutions available at a low cost or no cost basis in order to enhance their overall relationships with current or potential customers. Our competitors may also be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards, or customer requirements. With the introduction of new technologies and new market entrants, we expect competition to intensify in the future. In addition, some of our larger competitors have substantially broader offerings and can bundle competing products with other software offerings. As a result, customers may choose a bundled offering from our competitors, even if individual products have more limited functionality than our platform. These larger competitors are also often in a better position to withstand any significant reduction in capital spending and will therefore not be as susceptible to economic downturns.

***If our security measures are actually or perceived to have been breached or unauthorized access to our platform or customer data is otherwise obtained, our platform may be perceived as not being secure, customers may reduce the use of or stop using our platform, and we may incur significant liabilities.***

Our platform, which can be deployed in the cloud or on-premises, allows for the storage and transmission of our customers' proprietary or confidential information, which may include trade secrets, personally identifiable information, personal health information, and payment card information. Any actual or perceived unauthorized access to, or security incidents affecting, our platform or the information stored on or transmitted by our platform, including through unauthorized and/or malicious activity by one of our employees, could result in the loss of information, litigation, regulatory investigations, penalties, indemnity obligations and other costs, expenses, and liabilities, which could exceed our existing insurance coverage and could result in a substantial financial loss. While we have security measures in place designed to protect customer information and prevent data loss and other security breaches, there can be no assurance these measures will be effective in protecting against malicious unauthorized access to our platform or our customers' information. Similarly, if cyber incidents such as phishing attacks, viruses, denial of service attacks, supply chain attacks, malware installation, ransomware attacks, server malfunction, software or hardware failures, loss of data or other computer assets, adware, or other similar issues impair the integrity or availability of our systems by affecting our data or reducing access to or shutting down one or more of our computing systems or our IT network, we may be subject to negative treatment by our customers, our business partners, the press, and the public at large. Further, while security tested and techniques are in place and tested by third parties, because the techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. Additionally, we may be subject to attacks on our networks or systems or attempts to gain unauthorized access to our proprietary or confidential information or other data we or our vendors maintain such as data about our employees. Such attacks and other breaches of security may occur as a result of malicious attacks, human error, social engineering, or other causes. Any actual or perceived breach of our security measures or failure to adequately protect our customers' or our confidential or proprietary information could negatively affect our ability to attract new customers, cause existing customers to elect to not renew their subscriptions to our software, or result in reputational damage, any of which could adversely affect our operating results.

Further, security compromises experienced by our customers with respect to data hosted on our platform, even if caused by the customer's own misuse or negligence, may lead to public disclosures, which could harm our reputation, erode customer confidence in the effectiveness of our security measures, negatively impact our ability to attract new customers, or cause existing customers to elect not to renew their subscriptions with us. We may be subjected to indemnity demands, regulatory proceedings, audits, penalties, or litigation based on our customers' misuse of our platform with respect to such sensitive information and defending against such litigation and otherwise addressing such matters may be expensive, cause distraction, and may result in us incurring liability, all of which may affect our operating results.

While we maintain general liability insurance coverage and coverage for errors or omissions, we cannot provide assurance such coverage will be adequate or otherwise protect us from liabilities or damages with respect to claims alleging compromises of personal data or that such coverage will continue to be available on acceptable terms or at all.

***We derive a material portion of our revenue from a limited number of customers, and the loss of one or more of these customers could adversely impact our business, results of operations, and financial condition.***

Our customer base is concentrated. For example, during the years ended December 31, 2022, 2021, and 2020, revenue from U.S. federal government agencies represented 19.2%, 19.6%, and 18.1% of our total revenue, respectively, and the top three U.S. federal government customers generated 4.5%, 5.6%, and 6.6% of our total revenue for the years ended December 31, 2022, 2021, and 2020, respectively. Further, nearly 11% of our subscription customers spent more than \$1 million on our software in 2022. If we were to lose one or more of our significant customers, our revenue may significantly decline. In addition, revenue from significant customers may vary from period to period depending on the timing of renewing existing agreements or entering into new agreements. The loss of one or more of our significant customers could adversely affect our business, results of operations, and financial condition.

***A portion of our revenue is generated from subscriptions sold to governmental entities and heavily regulated organizations, which are subject to a number of challenges and risks.***

A significant portion of our revenue is generated from subscriptions sold to governmental entities, both in the United States and internationally. Additionally, many of our current and prospective customers such as those in the financial services, insurance, life sciences, and healthcare industries are highly regulated and may be required to comply with more stringent regulations in connection with subscribing to and implementing our platform. Selling subscriptions to these entities can be highly competitive, expensive, and time-consuming, often requiring significant upfront time and expense without any assurance we will successfully complete a sale. In addition, if our software does not meet the standards of new or existing regulations, we may be in breach of our contracts with our customers, allowing them to terminate their agreements.

Governmental demand and payment for our platform may also be impacted by public sector budgetary cycles and funding authorizations, with funding reductions or delays adversely affecting public sector demand for our platform. Governmental and highly regulated entities impose compliance requirements that are complicated, make pricing readily available, subject continued business to unpredictable competitive processes, or are otherwise time-consuming and expensive to satisfy. In the United States, applicable federal contracting regulations change frequently, and the President may issue executive orders requiring federal contractors to adhere to new compliance requirements after a contract is signed. If we commit to meet special standards or requirements and do not meet them, we could be subject to significant liability from our customers or regulators. Even if we do meet these special standards or requirements, the additional costs associated with providing our platform to government and highly regulated customers could harm our operating results. Moreover, changes in the underlying statutory and regulatory conditions that affect these types of customers could compromise our ability to efficiently provide them access to our platform and to grow or maintain our customer base. In addition, engaging in sales activities to foreign governments introduces additional compliance risks specific to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other similar statutory requirements prohibiting bribery and corruption in the jurisdictions in which we operate.

***We have experienced losses in the past, and we may not achieve or sustain profitability in the future.***

We generated net losses of \$150.9 million, \$88.6 million, and \$33.5 million in 2022, 2021, and 2020, respectively. As of December 31, 2022, we had an accumulated deficit of \$408.5 million. We will need to generate and sustain increased revenue levels in future periods in order to achieve or sustain profitability in the future. We also expect our costs to increase in future periods, which could negatively affect our future operating results if our revenue does not increase commensurately. For



example, we intend to continue to expend significant funds to expand our sales and marketing operations, develop and enhance our platform, meet the increased compliance requirements associated with our operation as a public company, and expand into new markets. Our efforts to grow our business may be more costly than we expect, and we may not be able to increase our revenue enough to offset our higher operating expenses. We may incur significant losses in the future for a number of reasons, including the other risks described in this Annual Report on Form 10-K, and unforeseen expenses, difficulties, complications and delays, and other unknown events. If we are unable to achieve and sustain profitability, our stock price may significantly decrease.

***Our future results of operations may fluctuate significantly due to a wide range of factors, which makes our future results difficult to predict.***

Our revenue and results of operations have historically varied from period to period, and we expect they will continue to do so as a result of a number of factors, many of which are outside of our control, including:

- The level of demand for our platform and our professional services;
- The rate of renewal of subscriptions with, and extent of sales of additional subscriptions to, existing customers;
- Large customers failing to renew their subscriptions;
- The size, timing, and terms of our subscription agreements with existing and new customers, including revenue recognition issues;
- Variations in the revenue mix of our professional services and growth rates of our cloud subscription and professional services offerings, including the timing of subscriptions and sales offerings that include an on-premises software element for which the revenue allocated to that deliverable is recognized upfront;
- The timing and growth of our business, in particular through our hiring of new employees and international expansion;
- The timing of our adoption of new or revised accounting pronouncements applicable to public companies and the impact on our results of operations;
- The introduction of new products and product enhancements by existing competitors or new entrants into our market and changes in pricing for solutions offered by us or our competitors;
- Network outages, security breaches, technical difficulties, or interruptions with our platform;
- Changes in the growth rate of the markets in which we compete;
- The mix of subscriptions to our platform and professional services sold during a period;
- Customers delaying purchasing decisions in anticipation of new developments or enhancements by us or our competitors or otherwise;
- Changes in customers' budgets;
- Seasonal variations related to sales and marketing and other activities such as expenses related to our customers;
- Our ability to increase, retain, and incentivize the strategic partners that market and sell our platform;
- Our ability to control costs, including our operating expenses;
- Our ability to hire, train, and maintain our direct sales team;
- Unforeseen litigation and intellectual property infringement;
- Any changes in accounting principles generally accepted in the United States, or GAAP;
- Fluctuations in our effective tax rate; and
- General economic and political conditions, both domestically and internationally, as well as economic conditions specifically affecting industries in which our customers operate.

Any one of these or other factors discussed elsewhere in this Annual Report on Form 10-K or the cumulative effect of some of these factors may result in fluctuations in our revenue and operating results, meaning quarter-to-quarter comparisons of

our revenue, results of operations, and cash flows may not necessarily be indicative of our future performance, may cause us to miss our guidance or analyst expectations, and may cause our stock price to decline.

In addition, we have historically experienced seasonality in terms of when we enter into agreements with customers. We typically enter into a significantly higher percentage of agreements with new customers, as well as renewal agreements with existing customers, in the fourth quarter. The increase in customer agreements for the fourth quarter is attributable to large enterprise account buying patterns typical in the software industry. Furthermore, we usually enter into a significant portion of agreements with customers during the last month, and often the last two weeks, of each quarter. This seasonality is reflected to a much lesser extent, and sometimes is not immediately apparent, in revenue due to the fact we recognize cloud subscription revenue over the term of the subscription agreement, which is generally one to three years. We expect seasonality will continue to affect our operating results in the future and may reduce our ability to predict cash flow and optimize the timing of our operating expenses.

***We may fail to meet our publicly announced guidance or other expectations about our business and future operating results, which could cause our stock price to decline.***

We have provided and may continue to provide guidance about our business, future operating results, and other business metrics. In developing this guidance, our management must make certain assumptions and judgments about our future performance. Furthermore, analysts and investors may develop and publish their own projections of our business, which may form a consensus about our future performance. Our business results may vary significantly from such guidance or that consensus due to a number of factors, many of which are outside of our control, including due to the global economic uncertainty and financial market conditions which could adversely affect our operations and operating results. Furthermore, if our publicly announced guidance of future operating results fails to meet our previously announced guidance or the expectations of securities analysts, investors, or other interested parties, the price of our common stock would decline.

***If we are unable to successfully transition to new leadership in key departments, our results could suffer.***

Appian has undergone change in departments directly responsible for substantially all of Appian's revenue. While Appian believes its new leaders in these departments are highly qualified and will perform well in their roles, there can be no assurances the transition to new leadership will be executed without any disruption or effect on performance. New leadership requires time to become familiar with Appian's product offerings and its customer base, and such transition could lead to delayed implementation of strategies, revision of key practices and policies, re-training of personnel, and other disruptions.

While we will make efforts to mitigate such risk through extensive collaboration at the executive level, the effects of this transition could have an impact on our ability to sustain our growth in revenue or our ability to retain existing talent within the organization.

***We rely on the performance of highly skilled personnel, including senior management and our engineering, professional services, sales, and technology professionals; if we are unable to retain or motivate key personnel or hire, retain, and motivate qualified personnel, our business would be harmed.***

We believe our success has depended, and continues to depend, on the efforts and talents of our senior management team, particularly Matt Calkins, our founder and Chief Executive Officer, and our highly skilled team members, including our sales personnel, professional services personnel, cloud engineering and support personnel, and software engineers. We do not maintain key man insurance on any of our executive officers or key employees. From time to time, there have been and may continue to be changes in our senior management team resulting from the termination or departure of our executive officers and key employees. Our senior management and key employees are employed on an at-will basis, which means they could terminate their employment with us at any time.

Many of our executive officers and key employees receive equity compensation as a significant portion of their overall compensation package. A substantial decrease in the market price of our Class A common stock would effectively reduce the compensation of such persons and could increase the risk they depart from our company. The loss of any of our senior management or key employees, particularly Mr. Calkins, could adversely affect our ability to build on the efforts they have undertaken and to execute our business plan, and we may not be able to find adequate replacements. We cannot ensure we will be able to retain the services of any members of our senior management or other key employees.

Our ability to successfully pursue our growth strategy also depends on our ability to attract, motivate, and retain our personnel. Competition for well-qualified employees in all aspects of our business, including sales personnel, professional services personnel, cloud engineering and support personnel, and software engineers, is intense. Our continued ability to compete effectively depends on our ability to attract new employees and to retain and motivate existing employees. Further, a small portion of our employees are immigrants to the United States or foreign nationals holding visas. If immigration to the United States is further restricted by the federal government, we might lose existing employees who are unable to remain in the United States and our pool of qualified applicants might also be diminished, thereby hampering our recruiting efforts. If we do not succeed in attracting well-qualified employees or retaining and motivating existing employees, our business would be adversely affected.

***If we do not continue to innovate and provide a platform that is useful to our customers, we may not remain competitive, and our revenue and operating results could suffer.***

Our success depends on continued innovation to provide features that make our platform useful for our customers, our ability to persuade existing customers to expand their use of our platform to additional use cases and additional applications, and to purchase additional software licenses to our platform. We must continue to invest significant resources in research and development in order to continually improve the speed and power of our platform. We may introduce significant changes to our platform or develop and introduce new and unproven products, including using technologies with which we have little or no prior development or operating experience. If we are unable to continue offering innovative solutions or if new or enhanced solutions fail to engage our customers, we may be unable to attract additional customers or retain our current customers, which may adversely affect our business, operating results, and financial condition.

***We may need to reduce or change our pricing model to remain competitive.***

We generally sell our software on a per-user basis or through non-user based single application licenses. We have changed and expect we will continue to need to change our pricing model from time to time. As competitors introduce new products that compete with ours or reduce their prices, we may be unable to attract new customers or retain existing customers based on our historical pricing. We also must determine the appropriate price to enable us to compete effectively internationally. Moreover, mid- to large-size enterprises may demand substantial price discounts as part of the negotiation of sales contracts. As a result, we may be required or choose to reduce our prices or change our pricing model, which could adversely affect our business, operating results, and financial condition.

***Our business could be adversely affected if our customers are not satisfied with the deployment services provided by us or our partners.***

The success of our business depends on our customers' satisfaction with our platform, the support we provide for our platform, and the professional services we provide to help our customers deploy our platform. Professional services may be performed by our own staff, a third party, or a combination of the two. Our strategy is to work with third parties to increase the breadth, capability, and depth of capacity for delivery of these services to our customers, and third parties provide a significant portion of our deployment services. If a customer is not satisfied with the quality of work performed by us or a third party or with the type of applications delivered, we could incur additional costs to address the deficiency, which would diminish the profitability of the customer relationship. Further, a customer's dissatisfaction with our services could impair our ability to expand the number of licenses to our software purchased by that customer or adversely affect the customer's renewal of existing licenses. In addition, negative publicity related to our customer relationships, regardless of accuracy, may further damage our business by affecting our ability to compete for new business with actual and prospective customers.

***We are substantially dependent upon customer renewals, the addition of new customers, and the continued growth of our subscriptions revenue.***

We derive, and expect to increasingly derive in the future, a substantial portion of our revenue from the sale of software subscriptions. For 2022, 2021, and 2020, approximately 72.7%, 71.4%, and 65.2%, respectively, of our total revenue was subscriptions revenue. The market for our platform is still evolving, and competitive dynamics may cause pricing levels to change as the market matures and as existing and new market participants introduce new types of solutions and different approaches to enable customers to address their needs. As a result, we may be forced to reduce the prices we charge for software and may be required to offer terms less favorable to us for new and renewing agreements.

In order for us to improve our operating results, it is important our customers renew their subscriptions with us when their initial term expires, as well as purchase additional subscriptions from us. In general, our customers have no renewal obligation after their initial term expires, and we cannot provide assurance we will be able to renew subscriptions with any of our customers at the same or higher contract value.

Further, while we offer access to our platform primarily through multi-year subscription agreements, some agreements may have shorter durations. Additionally, some of our contracts limit the amount we can increase prices from period to period or include pricing guarantees. If our customers do not renew their agreements, terminate their agreements, renew their agreements on terms less favorable to us, or fail to purchase additional software subscriptions, our revenue may decline and our operating results would likely be harmed as a result.

***Because we generally recognize revenue from cloud subscriptions ratably over the term of the subscription agreement, near term changes in sales may not be reflected immediately in our operating results.***

We offer our solution primarily through multi-year cloud subscription agreements and generally recognize revenue ratably over the related subscription period. As a result, much of the revenue we report in each quarter is derived from the recognition of previously unbilled or deferred contract value relating to agreements entered into during prior periods. Accordingly, a decline in new or renewal subscription agreements in any quarter is not likely to be reflected immediately in our revenue results for that quarter. Such declines, however, would negatively affect our revenue, and to a lesser extent, deferred revenue balance in future periods, and the effect of significant downturns in sales and market acceptance of our platform and potential changes in our rate of renewals may not be fully reflected in our results of operations until future periods.

***If we are not able to maintain and enhance our brand, our business and operating results may be adversely affected.***

We believe developing and maintaining widespread awareness of our brand in a cost-effective manner is critical to achieving widespread acceptance of our platform and attracting new customers. Brand promotion activities may not generate customer awareness or increase revenue and, even if they do, any increase in revenue may not offset the expenses we incur in building our brand. If we fail to successfully promote and maintain our brand or incur substantial expenses, we may fail to attract or retain customers necessary to realize a sufficient return on our brand-building efforts or to achieve the widespread brand awareness critical for broad customer adoption of our platform.

***If our platform fails to perform properly or there are defects or disruptions in the rollout of our platform updates or enhancements, our reputation could be adversely affected, our market share could decline, and we could be subject to liability claims.***

Our platform is inherently complex and may contain material defects or errors. Any defects in functionality, security, or other conditions that cause interruptions in the availability of our platform could result in:

- Loss or delayed market acceptance and sales;
- Breach of warranty claims;
- Sales credits or refunds for prepaid amounts related to unused subscription services;
- Loss of customers;
- Diversion of development and support resources; and/or
- Injury to our reputation.

The costs incurred in correcting any material defects or errors might be substantial and could adversely affect our operating results.

Our customer agreements often provide service level commitments on a monthly basis. If we are unable to meet the stated service level commitments or suffer extended periods of unavailability for our platform, we may be contractually obligated to provide these customers with service credits or refunds for prepaid amounts, or we could face contract terminations. Our revenue could be significantly affected if we suffer unscheduled downtime that exceeds the allowed downtimes under our agreements with our customers.

Because of the large amount of data we collect and manage, it is possible hardware failures or errors in our systems could result in data loss or corruption or cause the information we collect to be incomplete or contain inaccuracies our customers regard as significant. Furthermore, the availability or performance of our platform could be adversely affected by a number of factors, including customers' inability to access the internet, our customers' increased usage of our cloud offering, the failure of our network or software systems, security breaches, or variability in user traffic for our services. For example, our cloud offering customers access our platform through their internet service providers. If a customer's service provider fails to provide sufficient capacity to support our platform or otherwise experiences service outages, such failure could interrupt our customers' access to our platform, adversely affect their perception of our platform's reliability, and reduce our revenue. In addition to potential liability, if we experience interruptions in the availability of our cloud offering, our reputation could be adversely affected, and we could lose customers.

We also provide frequent incremental releases of software updates and functional enhancements to our platform. Despite extensive pre-release testing, such new versions occasionally contain undetected errors when first introduced or released. We have, from time to time, found errors in our software, and new errors in our existing software may be detected in the future. Since our customers use our software for important aspects of their business, any errors, defects, disruptions in our platform, or other performance problems with our solution could hurt our reputation and may damage our customers' businesses. If that occurs, our customers may delay or withhold payment to us, elect not to renew, or make service credit claims, warranty claims, or other claims against us, and we could lose future sales. The occurrence of any of these events could result in an increase in our bad debt expense, an increase in collection cycles for accounts receivable, decreased future revenue and earnings, require us to increase our warranty provisions, or incur the risk or expense of litigation.

***We rely upon AWS to operate our cloud offering; any disruption of or interference with our use of AWS would adversely affect our business, results of operations, and financial condition.***

We outsource substantially all of the infrastructure relating to our cloud offering to AWS, which hosts our platform on our customers' behalf. Customers of our cloud offering need to be able to access our platform at any time, without interruption or degradation of performance, and we provide them with service level commitments with respect to uptime. AWS runs its own platform we access, and we are, therefore, vulnerable to service interruptions at AWS. We may experience interruptions, delays, and outages in service and availability from time to time as a result of problems with our AWS provided infrastructure, which could render our cloud offering inaccessible to customers. Additionally, AWS has suffered outages at specific customer locations in the past, rendering the customer unable to access our offering for periods of time. Lack of availability of our AWS infrastructure could be due to a number of potential causes including technical failures, natural disasters, fraud, or security attacks we cannot predict or prevent. Such outages could lead to the triggering of our service level agreements and the issuance of credits to our cloud offering customers, which may impact our operating results.

In addition, if the security of the AWS infrastructure is compromised or believed to have been compromised, our business, results of operations, and financial condition could be adversely affected. It is possible our customers and potential customers would hold us accountable for any breach of security affecting the AWS infrastructure, and we may incur significant liability from those customers and from third parties with respect to any breach affecting AWS systems. Because our agreement with AWS limits AWS's liability for damages, we may not be able to recover a material portion of our liabilities to our customers and third parties from AWS. Customers and potential customers may refuse to do business with us because of the perceived or actual failure of our cloud offering as hosted by AWS, and our operating results could be harmed.

Our agreement with AWS allows AWS to terminate the agreement by providing two years' prior written notice and may allow AWS to terminate in case of a breach of contract if such breach is uncured for 30 days or to terminate upon 30 days' advance written notice if AWS's further provision of services to us becomes impractical for legal or regulatory reasons.

Although we expect we could receive similar services from other third parties if any of our arrangements with AWS are terminated, we could experience interruptions on our platform and in our ability to make our platform available to customers, as well as delays and additional expenses in arranging alternative cloud infrastructure services.

***Our growth depends in part on the success of our strategic relationships with third parties.***

In order to grow our business, we anticipate we will continue to depend on relationships with strategic partners to provide broader customer coverage and solution delivery capabilities. Identifying partners, and negotiating and documenting relationships with them, requires significant time and resources. Our agreements with our strategic partners are non-exclusive and do not prohibit them from working with our competitors or offering competing solutions. Our competitors may be effective in providing incentives to third parties to favor their products or services or to prevent or reduce subscriptions to our services. If our partners choose to place greater emphasis on products of their own or those offered by our competitors or do not effectively market and sell our platform, our ability to grow our business and sell software and professional services may be adversely affected. In addition, acquisitions of our partners by our competitors could result in a decrease in the number of our current and potential customers, as our partners may no longer facilitate the adoption of our platform by potential customers.

If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our operating results may suffer. Even if we are successful, we cannot be sure these relationships will result in increased customer usage of our platform or increased revenue.

***Because our long-term growth strategy involves further expansion of our sales to customers outside the United States, our business will be susceptible to risks associated with international operations.***

A component of our growth strategy involves the further expansion of our operations and customer base internationally. In 2022, 2021, and 2020, revenue generated from customers outside the United States was 33.5%, 34.0%, and 33.8%, respectively, of our total revenue. We currently operate in Canada, Switzerland, the United Kingdom, France, Germany, the Netherlands, Italy, Australia, Spain, Singapore, Sweden, Japan, Mexico, and India. In the future, we may expand to other international locations. Our current international operations and future initiatives will involve a variety of risks, including:

- Changes in a specific country's or region's political or economic conditions;
- Unexpected changes in regulatory requirements, taxes, or trade laws;
- More stringent regulations relating to data security and the unauthorized use of, or access to, commercial and personal information, particularly in the European Union;
- Differing labor regulations, especially in the European Union, where labor laws are generally more advantageous to employees as compared to the United States, including deemed hourly wage and overtime regulations in these locations;
- Challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits, and compliance programs;
- Difficulties in managing a business in new markets with diverse cultures, languages, customs, legal systems, alternative dispute systems, and regulatory systems;
- Increased travel, real estate, infrastructure, and legal compliance costs associated with international operations;
- Currency exchange rate fluctuations and the resulting effect on our revenue and expenses, and the cost and risk of entering into hedging transactions if we choose to do so in the future;
- Limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- Laws and business practices favoring local competitors or general preferences for local vendors;
- Limited or insufficient levels of protection of our corporate proprietary information and assets, including intellectual property and customer information and records;
- Political instability or terrorist activities;

- Exposure to liabilities under anti-corruption and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act and similar laws and regulations in other jurisdictions; and
- Adverse tax burdens and foreign exchange controls that could make it difficult to repatriate earnings and cash.

Our limited experience in operating our business internationally increases the risk any potential future expansion efforts we may undertake will not be successful. If we invest substantial time and resources to expand our international operations and are unable to do so successfully and in a timely manner, our business and operating results will suffer.

***We may require additional capital to support business growth, and this capital might not be available on acceptable terms, if at all.***

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new features or enhance our platform, improve our operating infrastructure, or acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our Class A common stock. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly impaired, and our business may be adversely affected.

***Pursuant to the terms of our outstanding indebtedness, we may be limited in our ability to incur future debt.***

In November 2022, we entered into a Senior Secured Credit Facilities Credit Agreement (as amended from time to time, the “Credit Facility”) with the several banks and other financial institutions or entities from time to time parties to the Credit Facility, as lenders, and Silicon Valley Bank, as administrative agent and collateral agent for the lenders, which provides for a five-year term loan facility in an aggregate principal amount of \$120.0 million and up to \$60.0 million for a revolving credit facility, including a letter of credit sub-facility in the aggregate availability amount of \$15.0 million and a swingline sub-facility in the aggregate availability amount of \$10.0 million (as a sublimit of the revolving loan facility). Our obligations under the Credit Facility are secured by substantially all of our assets.

Pursuant to the terms of the Credit Facility, we are limited in our ability to incur additional indebtedness other than on the terms and conditions thereof. In addition, a failure to comply with the covenants under the Credit Facility could result in an event of default by us and an acceleration of amounts due. If an event of default occurs that is not waived by the lenders, and the lenders accelerate any amounts due, we may not be able to make accelerated payments, and the lender could seek to enforce their security interests in the collateral securing such indebtedness, which could have a material adverse effect on our business and results of operations.

***We may not achieve market acceptance of our pre-built solutions, which may adversely impact our financial results.***

We have been developing and releasing pre-built solutions on our software platform in order to maximize the value of our platform to our customers and to reduce the sales cycles associated with software sales to new and existing customers. Each solution requires an investment in development, marketing, sales, support, finance, and legal resources to bring the solution to market. Although we make efforts to identify the solutions that will receive favorable market acceptance, there can be no guarantee any solution will become the source of material revenue, and the investment in the solution may not produce a positive return. If unsuccessful, such solutions may adversely impact our financial results to the extent our expenses increase without any increase in sales or to the extent attempted sales of such solutions reduce sales of our existing platform.

***If currency exchange rates fluctuate substantially in the future, our financial results, which are reported in U.S. dollars, could be adversely affected.***

Generally, contracts executed by our foreign operations are denominated in the currency of that country or region and a portion of our revenue is therefore subject to foreign currency risks. As we continue to expand our international operations, we become more exposed to the effects of fluctuations in currency exchange rates. A strengthening of the U.S. dollar could reduce the dollar value of revenue generated by our customers outside of the United States, adversely affecting our business operations

and financial results. We incur expenses for employee compensation and other operating expenses at our non-U.S. locations in the local currency, and fluctuations in the exchange rates between the U.S. dollar and other currencies could result in the dollar equivalent of such expenses being higher. This could have a negative impact on our reported operating results. To date, we have not engaged in any hedging strategies, and any such strategies such as forward contracts, options, and foreign exchange swaps related to transaction exposures we may implement to mitigate this risk may not eliminate our exposure to foreign exchange fluctuations.

***We employ third-party licensed software for use in or with our software, and the inability to maintain these licenses or errors in the software we license could result in increased costs or reduced service levels, which would adversely affect our business.***

Our software incorporates certain third-party software obtained under licenses from other companies, including database software from Kx Systems. We anticipate we will continue to rely on such third-party software and development tools from third parties in the future. Although we believe there are commercially reasonable alternatives to the third-party software we currently license, including open source software, this may not always be the case, or it may be difficult or costly to migrate to other third-party software. Our use of additional or alternative third-party software would require us to enter into license agreements with third parties. In addition, integration of the third-party software used in our software with new third-party software may require significant work and require substantial investment of our time and resources. Also, any undetected errors or defects in third-party software could prevent the deployment or impair the functionality of our software, delay new updates or enhancements to our platform, or result in a failure of our platform, injuring our reputation.

***If we do not or cannot maintain the compatibility of our platform with third-party applications that our customers use in their businesses, our revenue will decline.***

The functionality and attractiveness of our platform depends, in part, on our ability to integrate our platform with third-party applications and platforms, including customer relationship management, human resources information, accounting, and enterprise resource planning systems our customers use and from which they obtain data. Third-party providers of applications and APIs may change the features of their applications and platforms, restrict our access to their applications and platforms, or alter the terms governing use of their applications and APIs and access to those applications and platforms in an adverse manner. Such changes could functionally limit or terminate our ability to use these third-party applications and platforms in conjunction with our platform, which could negatively impact our offerings and harm our business. If we fail to integrate our software with new third-party applications and platforms our customers use, we may not be able to offer the functionality our customers need, which would negatively impact our ability to generate revenue and adversely impact our business.

***Catastrophic events may disrupt our business.***

Our corporate headquarters are located in northern Virginia. The area around Washington, D.C. could be subjected to domestic or foreign terrorist attacks. Additionally, we rely on our network and third-party infrastructure and enterprise applications, internal technology systems, and our website for our development, marketing, operational support, hosted services, and sales activities. In the event of a major hurricane, earthquake, or catastrophic event such as fire, power loss, telecommunications failure, cyberattack, outbreak of regional or global pandemic diseases, war, or terrorist attack, we may be unable to continue our operations and may endure system interruptions, reputational harm, delays in our software development, lengthy interruptions in our services, breaches of data security, and loss of critical data, all of which could have an adverse effect on our future operating results.

***Adverse economic conditions may negatively impact our business.***

Our business depends on the overall demand for enterprise software and on the economic health of our current and prospective customers. The economies of countries in Europe have been experiencing weakness associated with high sovereign debt levels, weakness in the banking sector, and uncertainties surrounding the future of the Euro zone. We have operations in the United Kingdom and in Europe and current and potential new customers in Europe. If economic conditions in Europe and other key markets for our platform continue to remain uncertain or deteriorate further, many customers may delay or reduce their information technology spending. This could result in reductions in sales of our platform, a decrease in our renewal rate, longer sales cycles, reductions in subscription duration and value, slower adoption of new technologies, and increased price competition. Any of these events would likely have an adverse effect on our business, operating results, and financial position.



***Future acquisitions could disrupt our business and adversely affect our business operations and financial results.***

In the past we have chosen and may continue to choose, to expand by acquiring businesses or technologies. Our ability as an organization to successfully acquire and integrate technologies or businesses is unproven. Acquisitions involve many risks, including the following:

- An acquisition may negatively affect our financial results because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- We may encounter difficulties or unforeseen expenditures in integrating the business, technologies, products, personnel, or operations of any company we acquire, particularly if key personnel of the acquired company decide not to work for us;
- An acquisition may disrupt our ongoing business, divert resources, increase our expenses, and distract our management;
- An acquisition may result in a delay or reduction of customer purchases for both us and the company acquired due to customer uncertainty about continuity and effectiveness of service from either company;
- We may encounter difficulties in successfully selling, or may be unable to successfully sell, any acquired solutions;
- An acquisition may involve the entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- Our use of cash to pay for an acquisition would limit other potential uses for our cash; and
- If we incur debt to fund such acquisition, such debt may subject us to material restrictions on our ability to conduct our business as well as financial maintenance covenants.

The occurrence of any of these risks could have a material adverse effect on our business operations and financial results. In addition, we may only be able to conduct limited due diligence on an acquired company's operations. Following an acquisition, we may be subject to unforeseen liabilities arising from an acquired company's past or present operations, and these liabilities may be greater than the warranty and indemnity limitations we negotiate. Any unforeseen liability greater than these warranty and indemnity limitations could have a negative impact on our financial condition.

**Risks Related to Regulatory Compliance and Governmental Matters**

***Failure to comply with governmental laws and regulations could harm our business.***

Our business is subject to regulation by various federal, state, local, and foreign governments. In certain jurisdictions, these regulatory requirements may be more stringent than those in the United States. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties, injunctions, or other collateral consequences. If any governmental sanctions are imposed or if we do not prevail in any possible civil or criminal litigation, our business, results of operations, and financial condition could be materially adversely affected. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees. Enforcement actions and sanctions could harm our business, reputation, results of operations, and financial condition.

***Because our software could be used to collect and store personal information, domestic and international privacy and security concerns could result in additional costs and liabilities to us or inhibit sales of our software and subject us to complex and evolving federal, state, and foreign laws and regulations regarding privacy, data protection, and other related matters.***

Personal privacy has become a significant issue in the United States and in many other countries where we offer our software for sale. The regulatory framework for privacy issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. Many federal, state, and foreign government bodies and agencies have adopted or are considering

adopting laws and regulations regarding the collection, use, storage, and disclosure of personal information and breach notification procedures. Interpretation of these laws, rules, and regulations and their application to our software and professional services in the United States and foreign jurisdictions is ongoing and cannot be fully determined at this time.

In the United States, these include rules and regulations promulgated under the authority of the Federal Trade Commission, the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, the Health Insurance Portability and Accountability Act of 1996, the Gramm Leach Bliley Act, the California Consumer Privacy Act, or the CCPA, and other state laws relating to privacy and data security. The CCPA, which became effective on January 1, 2020, drastically changes the ability for individuals to control the use of their personal data. It contains detailed requirements regarding collecting and processing personal information, imposes certain limitations on how such information may be used, and provides rights to consumers that have never before been available, all of which may be imposed on us by our customers. This could increase our costs of doing business. Further, the California Privacy Rights Act, or CPRA, which became effective on January 1, 2023, has significantly modified the CCPA, including by expanding consumers' rights with respect to certain sensitive personal information. The CPRA also created a new state agency, the California Privacy Protection Agency, or CPPA, that is vested with authority to implement and enforce the CCPA and the CPRA. New legislation proposed or enacted in various other states will continue to shape the data privacy environment nationally. For example, Virginia passed the Consumer Data Protection Act, which became effective on January 1, 2023 and Colorado passed the Colorado Privacy Act, which becomes effective July 1, 2023, both of which differ from the CPRA. Some of these state laws may be more stringent or broader in scope, or offer greater individual rights, with respect to confidential, sensitive, and personal information than federal, international, or other state laws, and such laws may differ from each other, which may complicate compliance efforts.

Internationally, the European Union has adopted a comprehensive and evolving general data protection regulation, or the GDPR, which contains numerous requirements related to rights of data subjects in their personal data, including more robust obligations on data processors and heavier documentation requirements for data protection compliance programs by companies in general. In addition, absent appropriate safeguards or other circumstances, the EU GDPR generally restricts the transfer of personal data to non-adequate countries outside of the European Economic Area, or EEA, such as the United States, which the European Commission does not consider to provide an adequate level of data privacy and security. The European Commission released a revised set of "Standard Contractual Clauses" in June 2021 that are designed to be a valid mechanism by which entities can transfer personal data out of the EEA to jurisdictions that the European Commission has not found to provide an adequate level of protection. Currently, these new Standard Contractual Clauses are a valid mechanism to transfer personal data outside of the EEA. The revised Standard Contractual Clauses, however, require parties relying upon that legal mechanism to comply with additional obligations, such as conducting transfer impact assessments to determine whether additional security measures are necessary to protect the at-issue personal data. Moreover, due to potential legal challenges, there exists some uncertainty regarding whether the new Standard Contractual Clauses will remain a valid mechanism for transfers of personal data out of the EEA.

Similarly, following Brexit, we are subject to the U.K. General Data Protection Regulation, or U.K. GDPR, a version of the GDPR as implemented into U.K. law that combines the GDPR and the U.K. Data Protection Act of 2018. U.K.-based data exporters are required to use the International Data Transfer Agreement, or IDTA, and the International Data Transfer Addendum to the European Commission's Standard Contractual Clauses, or the U.K. Addendum, as mechanisms to comply with the U.K. GDPR when making restricted international transfers of personal data.

Virtually every jurisdiction in which we operate has established its own data security and privacy legal framework with which we or our customers must comply. Since we are agnostic as to the data uploaded into our cloud offering by our cloud offering customers or processed by our platform in on-premises deployments, we may be hosting or otherwise processing substantial amounts of individually identifiable health information and other types of personally identifiable information. The effects of any of this legislation, and future changes to interpretations of this legislation, could be potentially far-reaching and may require us to modify our data management practices and to incur substantial expense in an effort to comply.

In addition to government regulation, privacy advocates and industry groups may propose new and different self-regulatory standards that may apply to us. Because the interpretation and application of privacy and data protection laws are still uncertain, it is possible these laws and other actual or alleged legal obligations such as contractual or self-regulatory obligations may be interpreted and applied in a manner inconsistent with our existing data management practices or the features of our platform. If so, in addition to the possibility of fines, lawsuits, and other claims, we could be required to fundamentally change our business activities and practices or modify our software, which could have an adverse effect on our business. Any inability to adequately

address privacy or cybersecurity concerns, even if unfounded, or comply with applicable privacy or data protection laws, regulations, and policies, could result in additional cost and liability to us, damage our reputation, inhibit sales, and adversely affect our business.

Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations, and policies applicable to the businesses of our customers may limit the use and adoption of, and reduce the overall demand for, our platform. Privacy concerns, whether valid or not valid, may inhibit market adoption of our platform, particularly in certain industries and foreign countries.

***If our platform fails to function in a manner allowing our customers to operate in compliance with regulations and/or industry standards, our revenue and operating results could be harmed.***

Certain of our customers use our platform to create applications that ensure secure communications given the nature of the content being distributed and associated applicable regulatory requirements. As attitudes towards privacy and data security evolve governmental and other customers may also require our platform to comply with certain privacy, security, and other certifications and standards that are specialized or industry-specific. Our cloud platform holds various security certifications from government agencies and industry organizations, including the Federal Risk and Authorization Management Program, or FedRAMP, compliance and HITRUST certification. It also meets the ISO 27001, Payment Card Industry Data Security Standard, or PCI DSS, and the various United States Health Insurance Portability and Accountability Act, or HIPAA, standards. Governments and industry organizations may also adopt new laws, regulations, or requirements or make changes to existing laws or regulations that could impact the demand for, or value of, our applications such as the European Banking Authority's regulations updated in September 2019 and the CCPA that took effect January 1, 2020. If we fail to maintain our current security certifications and/or to continue to meet security standards, or if we are unable to adapt our platform to changing legal and regulatory standards or other requirements in a timely manner, our customers may lose confidence in our platform, and our business could be negatively impacted.

***Changes in laws and regulations related to the internet or changes in the internet infrastructure itself may diminish the demand for our platform and could have a negative impact on our business.***

The future success of our business, and particularly our cloud offering, depends upon the continued use of the internet as a primary medium for commerce, communication, and business applications. Federal, state, or foreign government bodies or agencies have in the past adopted, and may in the future adopt, laws or regulations affecting the use of the internet as a commercial medium. Changes in these laws or regulations could require us to modify our platform in order to comply with these changes. In addition, government agencies or private organizations may begin to impose taxes, fees, or other charges for accessing the internet or commerce conducted via the internet. These laws or charges could limit the growth of internet-related commerce or communications generally, resulting in reductions in the demand for internet-based solutions such as ours.

In addition, the use of the internet as a business tool could be adversely affected due to delays in the development or adoption of new standards and protocols to handle increased demands of internet activity, security, reliability, cost, ease of use, accessibility, and quality of service. The performance of the internet and its acceptance as a business tool have been adversely affected by viruses, worms, and similar malicious programs, along with distributed denial of service, or DDoS, and similar attacks. As a result, the internet has experienced a variety of outages and other delays as a result of such damage to or attacks on portions of its infrastructure. If the use of the internet is adversely affected by these issues, demand for our platform could suffer.

***We are subject to anti-corruption laws with respect to our domestic and international operations, and non-compliance with such laws can subject us to criminal and/or civil liability and materially harm our business.***

We are subject to the U.S. Foreign Corrupt Practices Act of 1977, as amended, or the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the United Kingdom Bribery Act 2010, and other anti-corruption laws in countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit our company from authorizing, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. We use third-party law firms, accountants, and other representatives for regulatory compliance, sales, and other purposes in several countries. We can be held liable for the corrupt or other illegal activities of these third-party representatives, our employees, contractors, and other agents, even if we do not explicitly authorize such activities. In addition, although we have

implemented policies and procedures to ensure compliance with anti-corruption laws, there can be no assurance all of our employees, representatives, contractors, or agents will comply with these laws at all times.

Non-compliance with these laws could subject us to whistleblower complaints, investigations, sanctions, settlements, prosecution, other enforcement actions, disgorgement of profits, significant fines, damages, other civil and criminal penalties or injunctions, suspension and/or debarment from contracting with certain persons, the loss of export privileges, reputational harm, adverse media coverage, and other collateral consequences. If any subpoenas or investigations are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, results of operations, and financial condition could be materially harmed. In addition, responding to any action will likely result in a materially significant diversion of management's attention and resources and significant defense costs and other professional fees. Enforcement actions and sanctions could further harm our business, results of operations, and financial condition. Moreover, as an issuer of securities, we also are subject to the accounting and internal controls provisions of the FCPA. These provisions require us to maintain accurate books and records and a system of internal controls sufficient to detect and prevent corrupt conduct. Failure to abide by these provisions may have an adverse effect on our business, operations, or financial condition.

***We are subject to governmental export and import controls and economic and trade sanctions that could impair our ability to conduct business in international markets and subject us to liability if we are not in compliance with applicable laws and regulations.***

The United States and other countries maintain and administer export and import laws and regulations, including various economic and trade sanctions such as those administered by the Office of Foreign Assets Control, or OFAC, which apply to our business. We are required to comply with these laws and regulations. If we fail to comply with such laws and regulations, we and certain of our employees could be subject to substantial civil or criminal penalties, including the possible loss of export or import privileges, fines which may be imposed on us and responsible employees or managers, and, in extreme cases, the incarceration of responsible employees or managers.

Changes in our platform, or changes in applicable export or import laws and regulations, may create delays in the introduction and sale of our platform in international markets or, in some cases, prevent the export or import of our platform to certain countries, governments, or persons altogether. Any change in export or import laws and regulations or economic or trade sanctions, shift in the enforcement or scope of existing laws and regulations, or change in the countries, governments, persons, or technologies targeted by such laws and regulations could also result in decreased use of our platform or in our decreased ability to export or sell our platform to existing or potential customers. Any decreased use of our services or limitation on our ability to export or sell our services would likely adversely affect our business, financial condition, and results of operations.

We incorporate encryption technology into certain of our products. Encryption products may be exported outside of the United States only with the required export authorization, including by license, license exception, or other appropriate government authorization. Obtaining the necessary export license or other authorization for a particular sale may be time-consuming and may result in the delay or loss of sales opportunities. In addition, various countries regulate the import of certain encryption technology, including import permitting and licensing requirements, and have enacted laws that could limit our ability to distribute our products or could limit our customers' ability to implement our products in those countries. Although we take precautions to prevent our products from being provided in violation of such laws, our products may have been in the past, and could in the future, be provided inadvertently in violation of such laws, despite the precautions we take. Governmental regulation of encryption technology and regulation of imports or exports, or our failure to obtain required import or export approval for our products, could harm our international sales and adversely affect our revenue.

Moreover, U.S. export control laws and economic sanctions programs prohibit the provision of services to countries, governments, and persons subject to U.S. economic embargoes and trade sanctions. Even though we take precautions to prevent our platform from being used by U.S. sanctions targets, our platform could be used by a sanctioned person or in an embargoed country despite such precautions. Any such shipment could have negative consequences, including government investigations, penalties, and reputational harm.

## **Risks Related to Our Intellectual Property**

***Any failure to protect our proprietary technology and intellectual property rights could substantially harm our business and operating results.***

Our success and ability to compete depend in part on our ability to protect our proprietary technology and intellectual property. To safeguard these rights, we rely on a combination of patent, trademark, copyright, and trade secret laws and contractual protections in the United States and other jurisdictions, all of which provide only limited protection and may not now or in the future provide us with a competitive advantage.

As of December 31, 2022, we had 11 issued patents and six pending patent applications related to our platform and its technology. We have registered the “Appian” name and logo in the United States and certain other countries. We have registrations and/or pending applications for additional marks in the United States. We cannot provide assurance that any current or future applications for registrations for patent or trademark applications will result in the grant of any valid, enforceable intellectual property rights. Further, we cannot provide assurance that any granted patent or trademark will provide the protection we seek, will be valid if challenged, or will be sufficiently broad in actions against alleged infringers. Moreover, any of our granted intellectual property rights may be rendered invalid by future changes in the law, defects in our prosecution processes, or preexisting technology, rights, or marks.

In order to protect our unpatented proprietary technologies and processes, we rely on trade secret laws and confidentiality and invention assignment agreements with our employees, consultants, strategic partners, vendors, and others. Despite our efforts to protect our proprietary technology and trade secrets, unauthorized parties may attempt to misappropriate, copy, reverse engineer, or otherwise obtain and use them. In addition, others may independently discover our trade secrets, in which case we would not be able to assert trade secret rights or develop similar technologies and processes. Further, the contractual provisions we enter into may not prevent unauthorized use or disclosure of our proprietary technology or intellectual property rights and may not provide an adequate remedy in the event of any such unauthorized use or disclosure.

Policing unauthorized use of our technologies, trade secrets, and intellectual property is difficult, expensive, and time-consuming, particularly in foreign countries where the laws may not be as protective of intellectual property rights as those in the United States and where mechanisms for enforcement of intellectual property rights may be weak. To the extent we expand our activities outside of the United States, our exposure to unauthorized copying and use of our platform and proprietary information may increase. We may be unable to determine the extent of any unauthorized use or infringement of our platform, technologies, or intellectual property rights.

There can be no assurance the steps we take will be adequate to protect our proprietary technology and intellectual property, that others will not develop or patent similar or superior technologies, products or services, or that our trademarks, patents, and other intellectual property will not be challenged, invalidated, or circumvented by others. Furthermore, effective trademark, patent, copyright, and trade secret protection may not be available in every country in which our software is available or where we have employees or independent contractors.

In order to protect our intellectual property rights, we may be required to spend significant resources to monitor and protect these rights. Litigation brought to protect and enforce our intellectual property rights has been and could be costly, time-consuming, and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims, and countersuits attacking the validity and enforceability of our intellectual property rights. Our failure to secure, protect, and enforce our intellectual property rights could seriously adversely affect our brand and impact our business.

***We may be subject to intellectual property rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages, and could limit our ability to use certain technologies.***

Companies in the software and technology industries, including some of our current and potential competitors, own significant numbers of patents, copyrights, trademarks, and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. In addition, many of these companies have the capability to dedicate substantially greater resources to enforce their intellectual property rights and to defend claims that may be brought against them. The litigation may involve patent holding companies or other adverse patent owners that have no relevant product revenue and against which our patents may therefore provide little or no deterrence. In the past, we have been subject to allegations of patent infringement that were unsuccessful, and we may in the future be subject to claims we have

misappropriated, misused, or infringed other parties' intellectual property rights, and, to the extent we gain greater market visibility or face increasing competition, we face a higher risk of being the subject of intellectual property infringement claims, which is not uncommon with respect to enterprise software companies. We also generally grant our customers ownership of any custom applications we develop for them, subject to our continued ownership of our pre-existing intellectual property rights and, in the past, a customer for whom we have developed custom applications has incorrectly alleged applications we have independently developed infringed the customer's intellectual property rights. In addition, we have in the past, and may in the future, be subject to claims that our employees, contractors, or we ourselves have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of our competitors or other parties. To the extent intellectual property claims are made against our customers based on their usage of our technology, we have certain obligations to indemnify and defend such customers from those claims. The term of our contractual indemnity provisions often survives termination or expiration of the applicable agreement. Large indemnity payments, defense costs, or damage claims from contractual breach could harm our business, results of operations, and financial condition.

There may be third-party intellectual property rights, including issued or pending patents that cover significant aspects of our technologies or business methods. Any intellectual property claims, with or without merit, could be very time-consuming, expensive to settle or litigate, divert our management's attention and other resources, and result in adverse publicity. These claims could also subject us to making substantial payments for legal fees, settlement payments, and other costs or damages, potentially including treble damages if we are found to have willfully infringed patents or copyrights. These claims could also result in our having to stop making, selling, offering for sale, or using technology found to be in violation of a third party's rights. We might be required to seek a license for the third-party intellectual property rights, which may not be available on reasonable terms or at all. Moreover, to the extent we only have a license to any intellectual property used in our platform, there may be no guarantee of continued access to such intellectual property, including on reasonable terms. As a result, we may be required to develop alternative non-infringing technology, which could require significant effort and expense. If a third party is able to obtain an injunction preventing us from accessing such third-party intellectual property rights, or if we cannot license or develop technology for any infringing aspect of our business, we would be forced to limit or stop sales of our software or cease business activities covered by such intellectual property and may be unable to compete effectively. Any of these results would adversely affect our business, results of operations, financial condition, and cash flows.

***Portions of our platform utilize open source software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.***

Our software contains software licensed to us by third parties under so-called "open source" licenses, including the GNU Lesser General Public License, the BSD License, and others. From time to time, there have been claims against companies that distribute or use open source software in their products and services, asserting such open source software infringes the claimants' intellectual property rights. We could be subject to suits by parties claiming what we believe to be licensed open source software infringes their intellectual property rights. Use and distribution of open source software may entail greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. In addition, certain open source licenses require source code for software programs subject to the license be made available to the public and that any modifications or derivative works to such open source software continue to be licensed under the same terms.

Although we monitor our use of open source software in an effort both to comply with the terms of the applicable open source licenses and to avoid subjecting our software to conditions we do not intend, the terms of many open source licenses have not been interpreted by U.S. courts, and there is a risk these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize our platform. By the terms of certain open source licenses, we could be required to release the source code of our software and to make our software available under open source licenses, if we combine or distribute our software with open source software in a certain manner. In the event portions of our software are determined to be subject to an open source license, we could be required to publicly release the affected portions of our source code, re-engineer all, or a portion of, that software or otherwise be limited in the licensing of our software, each of which could reduce or eliminate the value of our platform. Many of the risks associated with usage of open source software cannot be eliminated and could negatively affect our business, results of operations, and financial condition.

#### **Risks Related to Tax and Accounting Matters**

***If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.***

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, as provided in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of this Annual Report on Form 10-K. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities, and equity as well as the amount of revenue and expenses. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue recognition, income taxes and the related valuation allowance, stock-based compensation, impairment of goodwill and long-lived assets, and business combinations. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the trading price of our Class A common stock.

***Our operating results may be negatively affected by additional tax liabilities.***

We currently collect and remit sales and use, value added, and other transaction taxes in certain of the jurisdictions where we do business based on our assessment of whether tax is owed by us in such jurisdictions. However, in some jurisdictions in which we do business, we do not believe we owe such taxes, and therefore we currently do not collect and remit such taxes or record contingent tax liabilities in those jurisdictions. Further, due to uncertainty in the application and interpretation of applicable tax laws in various jurisdictions, we may be exposed to sales and use, value added, or other transaction tax liability. A successful assertion that we are required to pay additional taxes in connection with sales of our platform, or the imposition of new laws or regulations requiring the payment of additional taxes, would create increased costs and administrative burdens for us. If we are subject to additional taxes and determined to offset such increased costs by collecting and remitting sales taxes from our customers, or otherwise passing those costs through to our customers, companies may be discouraged from using our platform. Any increased tax burden may decrease our ability or willingness to compete in relatively burdensome tax jurisdictions, result in substantial tax liabilities related to past sales, or otherwise harm our business and operating results.

In addition, as a multinational organization, we may be subject to taxation in several jurisdictions around the world with increasingly complex tax laws and the amount of taxes we pay in these jurisdictions could increase substantially as a result of changes in the applicable tax principles, including increased tax rates, new tax laws, or revised interpretations of existing tax laws and precedents. Furthermore, the authorities in these jurisdictions could review our tax returns and impose additional tax, interest, and penalties, and the authorities could claim various withholding requirements apply to us or our subsidiaries or assert benefits of tax treaties are not available to us or our subsidiaries, any of which could have a material impact on us and the results of our operations.

***Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.***

As of December 31, 2022, we had gross U.S. federal and state net operating loss carryforwards, or NOLs, of \$237.7 million and \$256.3 million, respectively, available to offset future taxable income. NOLs generated in tax years ended on or prior to December 31, 2017 will substantially expire by 2037 if unused. As a result of certain provisions in the Tax Cuts and Jobs Act of 2017, or the TCJA, as modified by the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, federal NOLs generated in tax years beginning after December 31, 2017 may be carried forward indefinitely but, in the case of tax years beginning after 2020, may only be used to offset 80% of our taxable income annually. Under the provisions of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, substantial changes in our ownership may limit the amount of pre-change NOLs that can be utilized annually in the future to offset taxable income. Section 382 of the Internal Revenue Code imposes limitations on a company’s ability to use NOLs if a company experiences a more-than-50-percent ownership change over a three-year testing period. Based upon our analysis as of December 31, 2022, we have determined we do not expect these limitations to impair our ability to use our NOLs prior to expiration. However, if changes in our ownership occur in the future, our ability to use our NOLs may be further limited. For these reasons, we may not be able to utilize a material portion of the NOLs, even if we achieve profitability.

As of December 31, 2022, we also had gross foreign NOLs of \$163.4 million, primarily at our Swiss subsidiary, Appian Software International. We had gross foreign NOL expirations of \$8.1 million in 2022, and a piece of our foreign NOLs will

continue to expire each year if unutilized. If we are limited in our ability to use our NOLs in future years in which we have taxable income, we will pay more taxes than if we were able to fully utilize our NOLs. This could adversely affect our operating results and the market price of our Class A common stock.

***Forecasting our estimated annual effective tax rate for financial accounting purposes is complex and subject to uncertainty, and there may be material differences between our forecasted and actual tax rates.***

Forecasts of our income tax position and effective tax rate for financial accounting purposes are complex and subject to uncertainty because our income tax position for each year combines the effects of a mix of profits earned and losses incurred by us in various tax jurisdictions with a broad range of income tax rates, as well as changes in the valuation of deferred tax assets and liabilities, the impact of various accounting rules and changes to these rules and tax laws, the results of examinations by various tax authorities, and the impact of any acquisition, business combination, or other reorganization or financing transaction. To forecast our global tax rate, we estimate our pre-tax profits and losses by jurisdiction and forecast our tax expense by jurisdiction. If the mix of profits and losses, our ability to use tax credits, or effective tax rates by jurisdiction is different than those estimated, our actual tax rate could be materially different than forecasted, which could have a material impact on our results of business, financial condition, and results of operations.

***We are obligated to develop and maintain proper and effective internal controls over financial reporting, and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and, as a result, the value of our Class A common stock.***

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, or Section 404, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting on an annual basis. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting.

During the evaluation and testing process of our internal controls, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert our internal control over financial reporting is effective. While we have established certain procedures and controls over our financial reporting processes, we cannot provide assurance these efforts will prevent restatements of our financial statements in the future. Our independent registered public accounting firm is also required, pursuant to Section 404, to attest to and report on management's assessment of our internal control over financial reporting, which report is included elsewhere in this Annual Report on Form 10-K. This assessment is required to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. For future reporting periods, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed, or operating. We may not be able to remediate any future material weaknesses or to complete our evaluation, testing, and any required remediation in a timely fashion.

Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. If we are unable to conclude our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our Class A common stock could decline, and we could be subject to sanctions or investigations by the Nasdaq Stock Market, the SEC, or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting or to implement or maintain other effective control systems required of public companies could also restrict our future access to the capital markets.

#### **Risks Related to Our Class A Common Stock**

***The dual class structure of our common stock and the existing ownership of capital stock by Matt Calkins, our founder and Chief Executive Officer, has the effect of concentrating voting control with Mr. Calkins for the foreseeable future, which will limit the ability of others to influence corporate matters.***

Our Class B common stock has ten votes per share, and our Class A common stock has one vote per share. Given the greater number of votes per share attributed to our Class B common stock, our Class B stockholders collectively beneficially owned shares representing approximately 88% of the voting power of our outstanding capital stock as of December 31, 2022. Further, Mr. Calkins, our founder and Chief Executive Officer, together with his affiliates, collectively beneficially owned



shares representing approximately 81% of the voting power of our outstanding capital stock as of December 31, 2022. Consequently, Mr. Calkins, together with his affiliates, is able to control a majority of the voting power even if their stock holdings represent as few as approximately 24% of the outstanding number of shares of our common stock. This concentrated control will limit the ability of others to influence corporate matters for the foreseeable future. For example, Mr. Calkins will be able to control elections of directors, amendments of our certificate of incorporation or bylaws, increases to the number of shares available for issuance under our equity incentive plans or adoption of new equity incentive plans, and approval of any merger or sale of assets for the foreseeable future. This concentrated control could also discourage a potential investor from acquiring our Class A common stock due to the limited voting power of such stock relative to the Class B common stock and might harm the market price of our Class A common stock. In addition, Mr. Calkins has the ability to control the management and major strategic investments of our company as a result of his position as our Chief Executive Officer and his ability to control the election or replacement of our directors. As a board member and officer, Mr. Calkins owes a fiduciary duty to our stockholders and must act in good faith in a manner he reasonably believes to be in the best interests of our stockholders. However, as a stockholder, even a controlling stockholder, Mr. Calkins is entitled to vote his shares, and shares over which he has voting control, in his own interests, which may not always be in the interests of our stockholders generally.

Future transfers by Mr. Calkins and other holders of Class B common stock will generally result in those shares converting on a 1:1 basis to Class A common stock, which will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long-term.

***We do not intend to pay dividends on our common stock for the foreseeable future so any returns will depend on appreciation in the price of our Class A common stock.***

We have never declared or paid any cash dividends on our common stock, and we do not intend to pay any cash dividends in the foreseeable future. Although we paid a cash dividend in connection with the conversion of our Series A preferred stock to Class B common stock immediately prior to the closing of the IPO, which was agreed to at the time of the original issuance of the Series A preferred stock, we anticipate we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Additionally, our ability to pay dividends on our common stock is limited by restrictions under the terms of our credit agreement with Silicon Valley Bank. Any determination to pay dividends in the future will be at the discretion of our Board of Directors. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

***Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management, and limit the market price of our Class A common stock.***

In addition to the effects of our dual class structure, provisions in our amended and restated certificate of incorporation and amended and restated bylaws may have the effect of delaying or preventing a change in control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our Board of Directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibit a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder. Any of the foregoing provisions could limit the price investors might be willing to pay in the future for shares of our Class A common stock, and they could deter potential acquirers of our company, thereby reducing the likelihood a stockholder would receive a premium for its shares of our Class A common stock in an acquisition.

***Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us and limit the market price of our Class A common stock.***

Pursuant to our amended and restated certificate of incorporation, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees to us or our stockholders, (3) any action asserting a claim arising pursuant to any

provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation, or our amended and restated bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine. Our amended and restated certificate of incorporation also provides the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. Our amended and restated certificate of incorporation further provides any person or entity purchasing or otherwise acquiring any interest in shares of our Class A common stock is deemed to have notice of and consented to the foregoing provisions. The forum selection clause in our amended and restated certificate of incorporation may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us and limit the market price of our Class A common stock.

### **General risk factors**

***Unfavorable conditions in the global economy or the vertical markets we serve could limit our ability to grow our business and negatively affect our operating results.***

General worldwide economic conditions have experienced significant instability due to the global economic uncertainty and financial market conditions caused by the COVID-19 pandemic and the ongoing Russia-Ukraine war. In addition, inflation rates have recently risen to historically high levels. The existence of inflation in the U.S. and global economy has, and may continue to result in, higher interest rates and capital costs, increased costs of labor, fluctuating exchange rates, and other similar effects.

These conditions make it extremely difficult for customers and us to accurately forecast and plan future business activities and could cause customers to reduce or delay their software spending. At this time, the potential impact on customer spend from an economic slowdown is difficult to predict and, therefore, it is not possible to fully determine the impact on our future results. Historically, economic downturns have resulted in overall reductions in software spending. If macroeconomic conditions deteriorate or are characterized by uncertainty or volatility, customers may curtail or freeze spending on software in general and for software such as ours specifically, which could have an adverse impact on our business, financial condition, and operating results.

We have historically generated a majority of our revenue from customers in the financial services, government, and life sciences verticals. While these verticals have not been affected as severely by weak economic conditions as the retail, hospitality, and entertainment industries, we cannot provide assurance these verticals will not suffer more severe losses in the future. Furthermore, we cannot predict the timing, strength, or duration of any economic slowdown or recovery. In addition, even if the overall economy is robust, we cannot provide assurance the market for services such as ours will experience growth or that we will experience growth.

***Our stock price has been volatile and may be volatile in the future.***

The market price of our Class A common stock has been volatile and may continue to fluctuate substantially as a result of a variety of factors. Since shares of our Class A common stock were sold in our initial public offering, or IPO, in May 2017 at a price of \$12.00 per share, our stock price has ranged from an intraday low of \$14.60 to an intraday high of \$260.00 through February 13, 2023. Factors that may affect the market price of our Class A common stock and our ability to raise capital through the sale of additional equity securities include:

- Actual or anticipated fluctuations in our financial condition and operating results;
- Variance in our financial performance from expectations of securities analysts;
- Changes in the prices of subscriptions to our platform;
- Changes in our projected operating and financial results;
- Changes in laws or regulations applicable to our platform;
- Announcements by us or our competitors of significant business developments, acquisitions, or new offerings;
- Our involvement in any litigation;
- Our sale of our Class A common stock or other securities in the future;

- Changes in senior management or key personnel;
- The trading volume of our Class A common stock;
- Trading activity by any of our four large stockholders who collectively owned approximately 42% of our publicly traded Class A common stock as of December 31, 2022;
- Changes in the anticipated future size and growth rate of our market; and
- General economic, regulatory, and market conditions.

The stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies, particularly during this time of uncertainty with increasing interest rates, inflation, and the prospects of a recession. These fluctuations have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry fluctuations, as well as general economic, political, regulatory, and market conditions, may negatively impact the market price of our Class A common stock. In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation. We may be the target of this type of litigation in the future, which could result in substantial costs and divert our management's attention.

***If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our stock price and trading volume could decline.***

The trading market for our Class A common stock depends, in part, on the research and reports securities or industry analysts publish about us or our business. We do not have any control over these analysts. If our financial performance fails to meet analyst estimates or one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

**Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

As of December 31, 2022, our corporate headquarters occupies approximately 272,000 square feet in McLean, Virginia under an operating lease that expires in October 2031. Approximately 32,000 square feet of headquarters space is subleased. We also lease space in the United Kingdom, Italy, Australia, and Spain under operating lease agreements with various expiration dates through 2028. In addition, we utilize flexible workspaces depending on the occupancy needs in each of the countries we operate in. We believe our facilities are suitable and adequate to meet our needs.

**Item 3. Legal Proceedings.*****Pegasystems Litigation***

On May 29, 2020, we filed a civil complaint against Pegasystems, Inc. (“Pegasystems”) and Youyong Zou, a Virginia resident, in the Circuit Court for Fairfax County, Virginia. Appian Corp v. Pegasystems Inc. & Youyong Zou, No. 2020-07216 (Fairfax Cty. Ct.). On May 10, 2022, we announced the jury awarded us \$2.036 billion in damages for misappropriation of our trade secrets and \$1 in damages for violating the Virginia Computer Crimes Act. Pegasystems filed several post-trial motions seeking relief in the form of reducing the damages award or setting aside the jury’s verdict and either granting a new trial or entering judgment in Pegasystems’ favor. All of these motions were denied, and final judgment was entered by the Court on September 15, 2022. The final judgment reaffirmed the \$2.036 billion in damages and also ordered Pegasystems to pay Appian \$23.6 million in attorney’s fees associated with the case as well as statutory post-judgment interest on the judgment at an annual rate of 6%, or approximately \$122.0 million per year.

Defendant Youyong Zou has satisfied the judgment of \$5,000 (plus interest) against him in lieu of appealing that judgment. On September 15, 2022, Pegasystems filed a notice of appeal, and on February 6, 2023, Pegasystems filed its opening brief with the Court of Appeals of Virginia. Appian expects to file its responsive brief in March 2023, to which Pegasystems will file a reply brief. After submission of the reply brief, the timeline of the case is solely within the control of the Court of Appeals until it rules. Pegasystems is not required to pay us the judgment, attorney’s fees, or post-judgment interest until all appeals are exhausted. We cannot predict the outcome of any appeals or the time it will take to resolve them. Consistent with other judgments, there is no guarantee we will be able to collect all or any portion of the judgment.

***Other Matters***

From time to time, we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. Other than as disclosed elsewhere in this Annual Report, we are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition, or cash flows. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management time and resources, and other factors.

**Item 4. Mine Safety Disclosures.**

Not applicable.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities.

#### Market Information

Our Class A common stock is listed on the Nasdaq Global Market under the symbol "APPN". Our Class B common stock is not listed or traded on any stock exchange.

As of February 13, 2023, there were 19 holders of record of our Class A common stock and 34 holders of record of our Class B common stock. Because many of our shares of Class A common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

#### Dividends

We have never declared or paid, and do not anticipate declaring or paying in the foreseeable future, any cash dividends on our common stock. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our Board of Directors, subject to applicable laws, and will depend on then existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects, and other factors our Board of Directors may deem relevant.

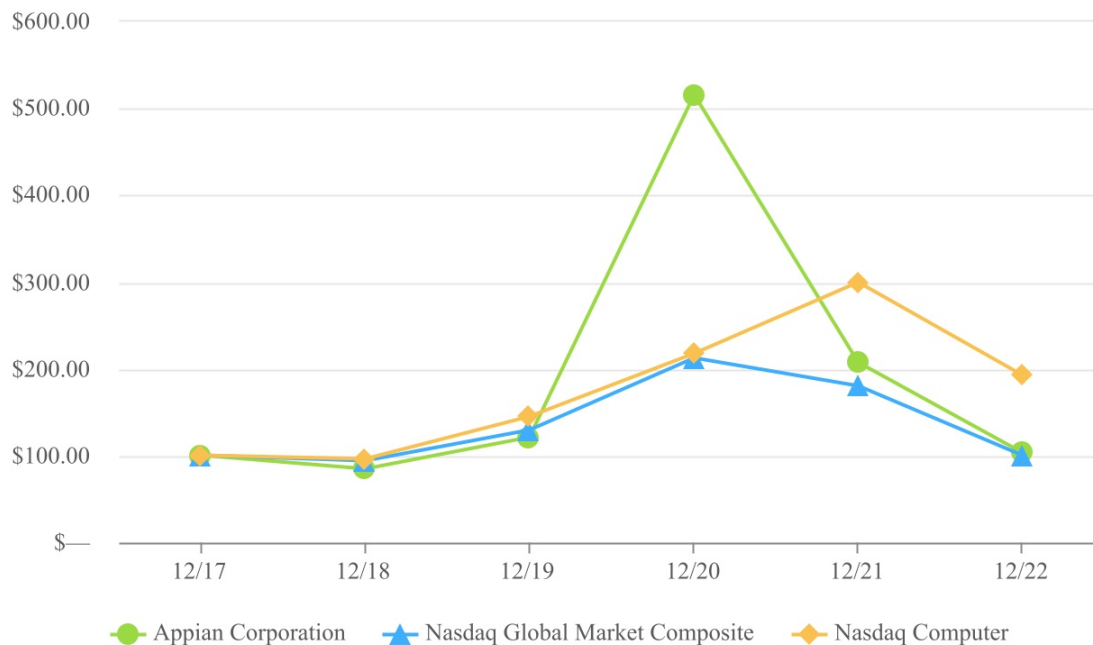
## Stock Performance Graph

This section is not deemed “filed” with the SEC and shall not be deemed incorporated by reference into any of our other filings under the Exchange Act or the Securities Act, irrespective of any general incorporation language in any such filing.

The following graph shows a comparison from December 31, 2017 through December 31, 2022, of the cumulative five year total return for an investment of \$100 in our Class A common stock, the Nasdaq Global Market Composite Index, and the Nasdaq Computer Index. Data for the Nasdaq Global Market Composite Index and the Nasdaq Computer Index assume reinvestment of any dividends. The comparisons in the graph below are based upon historical data and are not indicative of, nor intended to forecast, future performance of our common stock.

### Comparison of Cumulative Five Year Total Return

Among Appian Corporation, the Nasdaq Global Market Composite Index, and the Nasdaq Computer Index



As of December 31,

	2017	2018	2019	2020	2021	2022
Appian Corporation	\$ 100.00	\$ 84.85	\$ 121.38	\$ 514.90	\$ 207.15	\$ 103.43
Nasdaq Global Market Composite	\$ 100.00	\$ 93.55	\$ 128.97	\$ 212.65	\$ 180.40	\$ 99.84
Nasdaq Computer	\$ 100.00	\$ 96.32	\$ 144.80	\$ 217.17	\$ 299.39	\$ 192.28

## Purchase of Equity Securities by the Issuer and Affiliated Purchases

Period	Total number of shares purchased <sup>(1)</sup>	Average price paid per share	Total number of shares purchased as part of publicly announced plan	Maximum number of shares that may yet be purchased under the plan <sup>(2)</sup>
October 1 to October 31, 2022	5,220	\$ 44.09	5,220	941,935
November 1 to November 30, 2022	4,517	\$ 49.22	4,517	937,418
December 1 to December 31, 2022	5,413	\$ 38.03	5,413	932,005
Total	15,150	\$ 43.45	15,150	932,005

<sup>(1)</sup> Shares purchased represent shares purchased on the open market pursuant to the Appian Corporation Employee Stock Purchase Plan ("ESPP"), which was approved by the Company's stockholders on June 11, 2021. The ESPP provides employees an opportunity to purchase the Company's common stock through payroll deductions at 85% of the stock's fair market value. The Company satisfies its ESPP obligation by purchasing the additional 15% of the stock's fair value on the open market. Shares purchased under the ESPP are deposited into the participants' accounts.

<sup>(2)</sup> Because the number of shares that may be purchased under the ESPP depends on each employee's voluntary election to participate and contribution elections and on the fair market value of our Class A Common Stock at various future dates, the actual number of shares that may be purchased under the plan cannot be determined in advance. We have filed a registration statement on S-8 that covers 1,000,000 shares.

### Item 6.

[Reserved]

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results could differ materially from those contained in or implied by any forward-looking statements. Factors that could cause or contribute to these differences include those under "Risk Factors" included in Part I, Item 1A or in other parts of this Annual Report on Form 10-K.*

### Overview

Appian is a software company that automates business processes. The Appian Platform includes everything you need to design, automate, and optimize even the most complex processes, from start to finish. The world's most innovative organizations trust Appian to improve their workflows, unify data, and optimize operations—resulting in better growth and superior customer experiences.

We have generated the majority of our revenue from sales of subscriptions, which include (1) cloud subscriptions bundled with maintenance and support and hosting services and (2) term license subscriptions bundled with maintenance and support. Our subscription contracts are priced based primarily on the number of users who access and utilize the applications built on our platform or, alternatively, non-user based single application licenses. Our subscription contract terms generally vary from one to three years with most providing for payment in advance on an annual, quarterly, or monthly basis. Due to the variability of our billing terms and the episodic nature of our customers purchasing additional subscriptions, we do not believe changes in our deferred revenue in a given period are directly correlated with our revenue growth.

We have invested in our Customer Success organization to help ensure customers are able to build and deploy applications on our platform. We have several strategic partnerships, including with KPMG, Accenture, PwC, EY, Infosys, Wipro, and Deloitte, which allow them to refer customers to us in order to purchase subscriptions and then our partners provide professional services directly to the customers using our platform. We intend to further grow our base of strategic partners to provide broader customer coverage and solution delivery capabilities. In addition, over time we expect our professional services revenue as a percentage of total revenue to decline as we increasingly rely on strategic partners to help our customers deploy our software. We believe our investment in professional services, including strategic partners building their practices around Appian, will drive increased adoption of our platform.

As of December 31, 2022, we had 925 customers in a variety of industries, of which 712 customers were commercial and 213 customers were government or non-commercial entities. Our customers include financial services, government, life sciences, insurance, manufacturing, energy, healthcare, telecommunications, and transportation organizations. Generally, our sales team targets its efforts to organizations with over 2,000 employees and \$2 billion in annual revenue. Revenue from government agencies represented 19.2%, 19.6%, and 18.1% of our total revenue in 2022, 2021, and 2020, respectively. No single end-customer accounted for more than 10% of our total revenue in 2022, 2021, and 2020.

We offer our platform globally. Our platform supports multiple languages to facilitate collaboration and address challenges in multinational organizations. In 2022, 2021, and 2020, 33.5%, 34.0%, and 33.8%, respectively, of our total revenue was generated from customers outside of the United States. As of December 31, 2022, we operated in 15 countries. We believe we have a significant opportunity to continue to grow our international footprint. We are investing in new geographies, including through investment in direct and indirect sales channels, professional services, and customer support and implementation partners.

We have experienced strong revenue growth, with revenue of \$468.0 million, \$369.3 million, and \$304.6 million in 2022, 2021, and 2020, respectively. Our subscriptions revenue was \$340.2 million, \$263.7 million, and \$198.7 million in 2022, 2021, and 2020, respectively, and includes sales of our cloud subscriptions, on-premises term license subscriptions, and maintenance and support. Our cloud subscription revenue was \$236.9 million, \$179.4 million, and \$129.2 million in 2022, 2021, and 2020, respectively.

We have invested in developing our platform, expanding our sales and marketing and research and development capabilities, and providing general and administrative resources to support our growth. We intend to continue to invest in our



business to take advantage of our market opportunity. As a result, we incurred net losses of \$150.9 million, \$88.6 million, and \$33.5 million in 2022, 2021, and 2020, respectively. We also used cash in operations of \$106.6 million, \$53.9 million, and \$7.6 million in 2022, 2021, and 2020, respectively.

## Our Business Model

Our business model focuses on maximizing the lifetime value of customer relationships, which is a function of the duration of a customer's deployment of our platform as well as the price and number of subscriptions of our platform a customer purchases. We incur significant customer acquisition costs, including expenses associated with hiring new sales representatives, who can take anywhere from six months to a year to become productive given the length of our sales cycle, and marketing costs, with the exception of sales commissions, are expensed as incurred.

At the same time, we believe the costs we incur to retain customers and drive additional purchases of software are lower than our customer acquisition costs on a relative basis. Over time, we expect a large portion of our customers to renew their subscriptions and purchase additional subscriptions as they continue to build more applications and add more users to our platform. Over the last three completed fiscal years, we had an average cloud subscription gross revenue renewal rate of 99%, which is calculated by dividing (i) the cloud subscription revenue from renewing cloud customers in the current 12-month period that were cloud customers during the entirety of the prior 12-month period, giving effect to price increases but excluding additional cloud subscription for additional users, or upsells, by (ii) our cloud subscription revenue from all cloud customers in the corresponding prior 12-month period that were cloud customers during the entirety of such prior 12-month period.

We measure the effectiveness of our business model by comparing the lifetime value of our customer relationships to our customer acquisition costs. On a rolling 12-month basis, we estimate that for each of the past five fiscal years, the average lifetime value of a customer has exceeded 7x the associated average cost of acquiring them, including the year ended December 31, 2022.

## Key Factors Affecting Our Performance

The following are several key factors that affect our performance:

- **Market Adoption of Our Platform.** Our ability to grow our customer base and drive market adoption of our platform is affected by the pace at which organizations digitally transform. We expect our revenue growth will be primarily driven by the pace of adoption and penetration of our platform. We offer a leading custom software platform and intend to continue to invest to expand our customer base. The degree to which prospective customers recognize the need for our software platform that enables organizations to digitally transform, and subsequently allocate budget dollars to purchase our software, will drive our ability to acquire new customers and increase sales to existing customers, which, in turn, will affect our future financial performance.
- **Growth of Our Customer Base.** We believe we have a substantial opportunity to grow our customer base. We define a customer as an entity with an active subscription or maintenance and support contract or a legacy perpetual license as of the specified measurement date. Furthermore, we define a new customer as an entity that has entered into its first active subscription or maintenance and support contract within one calendar year of the specified measurement date while existing customers are defined as entities that have maintained an active subscription or maintenance and support contract for at least one calendar year from the specified measurement date. Legacy customers from entities acquired in business combinations are not counted as new customers until they enter into a new active subscription or maintenance and support contract with us subsequent to the completion of the business combination. Additionally, to the extent we contract with one or more entities under common control, we count those entities as separate customers.

We have aggressively invested, and intend to continue to invest, in our sales team in order to drive sales to new customers. We continue to make investments to enhance the expertise of our sales and marketing organization within our key industry verticals of financial services, government, and life sciences. In addition, we have established relationships with strategic partners who work with organizations undergoing digital transformations. We had a total customer count of 925, 816, and 693 as of December 31, 2022, 2021, and 2020, respectively. Our number of customers with active software subscription agreements was 896, 783, and 654 as of December 31, 2022, 2021, and 2020,

respectively. Our ability to continue to grow our customer base is dependent, in part, upon our ability to differentiate ourselves within the increasingly competitive markets in which we participate.

- **Further Penetration of Existing Customers.** Our sales team seeks to generate additional revenue from existing customers by adding new users to our platform. Many of our customers begin by building a single application and then grow to build dozens of applications on our platform. Generally, the development of new applications on our platform results in the expansion of our user base within an organization and a corresponding increase in revenue. As a result of this “land and expand” strategy, we have generated significant additional revenue from our customer base. Our ability to increase sales to existing customers will depend on a number of factors, including the size of our sales and professional services teams, customers’ level of satisfaction with our platform and professional services, pricing, economic conditions, and our customers’ overall spending levels. We have also re-focused some of our professional services personnel to become customer success managers. Their role is to ensure customers realize value from our platform and support strategic partners and the “land and expand” strategy versus delivering billable hours.
- **Mix of Subscriptions and Professional Services Revenue.** We believe our professional services have driven customer success and facilitated the adoption of our platform by customers. During the initial period of deployment by a customer, we generally provide a greater amount of support in building applications and training than later in the deployment, with a typical engagement lasting from two to six months. At the same time, many of our customers have historically purchased subscriptions only for a limited set of their total potential end users. As a result of these factors, the proportion of total revenue for a customer associated with professional services is relatively high during the initial deployment period. Over time, as the need for professional services associated with user deployments decreases and the number of end users increases, we expect subscriptions revenue as a percentage of total revenue to increase. In addition, we continue to grow our base of strategic partners to provide broader customer coverage and solution delivery capabilities. These partners perform professional services with respect to any new service contracts they originate. As the usage of partners expands, we expect the proportion of our total revenue from subscriptions to increase over time relative to professional services. In 2022, 2021, and 2020, 72.7%, 71.4%, and 65.2% of our revenue, respectively, was derived from sales of subscriptions, while the remaining 27.3%, 28.6%, and 34.8%, respectively, was derived from the sale of professional services.
- **Investments in Growth.** We have made, and plan to continue to make, investments for long-term growth, including investing in our platform and infrastructure to continuously maximize their power and speed, meet the evolving needs of our customers, and take advantage of our market opportunity. In addition, we continue to pursue strategic acquisitions that enhance our product offerings. We also intend to continue to invest in sales and marketing as we further expand our sales teams, increase our marketing activities, and grow our international operations.

## Seasonality

We have historically experienced seasonality in terms of when we enter into agreements with customers. We typically enter into a significantly higher percentage of agreements with new customers, as well as renewal agreements with existing customers, in the fourth quarter. The increase in customer agreements for the fourth quarter is attributable to large enterprise account buying patterns typical in the software industry. Furthermore, we usually enter into a significant portion of agreements with customers during the last month of each quarter, and often the last two weeks of each quarter. However, we recognize the majority of our subscriptions revenue ratably over the terms of our subscription agreements, which are generally one to three years in length. As a result, a substantial portion of the subscriptions revenue we report in each period will be derived from the recognition of deferred revenue relating to agreements entered into during previous periods. Consequently, a decline in new sales or renewals in any one period may not be immediately reflected in our revenue results for that period. Such a decline, however, will negatively affect our revenue in future periods. Accordingly, the effect of significant downturns in sales and market acceptance of our platform and potential changes in our rate of renewals may not be fully reflected in our results of operations until future periods.

While we will continue to recognize the majority of our subscriptions revenue ratably over the terms of our subscription agreements, we may experience greater variability and reduced comparability of our quarterly revenue and results with respect to the timing and nature of our term license subscription agreements due to the upfront revenue recognition. See Note 3 to the consolidated financial statements for further details on our revenue recognition policies.

## Key Metrics

We monitor the following metrics to help us measure and evaluate the effectiveness of our operations. All dollar amounts are presented in thousands.

### *Cloud Subscription Revenue*

	Year Ended December 31,		
	2022	2021	2020
Cloud subscription revenue	\$ 236,922	\$ 179,415	\$ 129,219

Cloud subscription revenue includes cloud subscriptions bundled with maintenance and support and hosting services. In 2022, 2021, and 2020, 69.7%, 68.0%, and 65.0%, respectively, of subscriptions revenue was cloud subscription revenue. Our cloud subscription revenue for any customer is primarily determined by the number of users who access and utilize the applications built on our platform or by the number of application licenses purchased, as well as the price paid. We believe increasing cloud subscription revenue is an indicator of the demand for our platform, the pace at which the market for our solutions is growing, the productivity of our sales team and strategic relationships in growing our customer base, and our ability to further penetrate our existing customer base.

### *Cloud Subscription Revenue Retention Rate*

	As of December 31,		
	2022	2021	2020
Cloud subscription revenue retention rate	115 %	116 %	119 %

A key factor to our success is the renewal and expansion of subscription agreements with our existing customers. We calculate this metric over a set of customers who have been with us for at least one full year. To calculate our cloud subscription revenue retention rate for a particular trailing 12-month period, we first establish the recurring cloud subscription revenue for the previous trailing 12-month period. This effectively represents recurring dollars we should expect in the current trailing 12-month period from the cohort of customers from the previous trailing 12-month period without any expansion or contraction. We subsequently measure the recurring cloud subscription revenue in the current trailing 12-month period from the cohort of customers from the previous trailing 12-month period. Cloud subscription revenue retention rate is then calculated by dividing the aggregate recurring cloud subscription revenue in the current trailing 12-month period by the previous trailing 12-month period. This calculation includes the combined impact on our revenue from customer non-renewals, pricing changes, and growth in the number of users on our platform. Our cloud subscription revenue retention rate can fluctuate from period to period due to large customer contracts in any given period.

## Key Components of Results of Operations

We generate revenue primarily through sales of subscriptions to our platform as well as professional services. We generally sell our software on a per-user basis or through non-user based single application licenses. We generally bill customers and collect payment for subscriptions to our platform in advance on an annual, quarterly, or monthly basis. In certain instances, we have had customers pay their entire contract value up front.

### *Revenue*

Our revenue is comprised of the following:

#### *Subscriptions*

Subscriptions revenue is primarily derived from cloud subscriptions bundled with maintenance and support and hosting services and on-premises term license subscriptions bundled with maintenance and support. Our maintenance and support agreements provide customers with the right to unspecified software upgrades, maintenance releases and patches released

during the term of the maintenance and support agreement on a when-and-if-available basis, and rights to technical support. On-premises term license subscriptions are offered when the customer prefers to self-manage the deployment of our platform within their own infrastructure. When our platform is delivered as a cloud subscription, we manage operational needs in third-party hosted data centers.

#### *Professional Services*

Our professional services revenue is comprised of fees for consulting services, including application development, deployment assistance, and training related to our platform. Over time, we expect professional services revenue as a percentage of total revenue to decrease as the usage of our partner network expands.

#### **Cost of Revenue**

##### *Subscriptions*

Cost of subscriptions revenue consists primarily of fees paid to our third-party managed hosting providers and other third-party service providers, personnel costs, including payroll and benefits for our technology operations and customer support teams, amortization of developed technology, and allocated overhead costs. We expect cost of revenue to continue to increase in absolute dollars for the foreseeable future as our customer base grows.

##### *Professional Services*

Cost of professional services revenue includes all direct and indirect costs to deliver our professional services and training, including employee compensation for our global professional services and training personnel, third-party contractor costs, allocated overhead costs, and the costs of billable expenses such as travel and lodging. The unpredictability of the timing of providing services related to significant professional services agreements sold on a standalone basis may cause significant fluctuations in our cost of professional services which, in turn, may impact our financial results.

#### **Gross Profit and Gross Margin**

Gross profit and gross margin (defined as gross profit as a percentage of total revenue), have been, and will continue to be, affected by various factors, including the mix of cloud subscriptions and on-premises term license subscriptions, the mix of total subscriptions revenue and professional services revenue, subscription pricing, the costs associated with third-party hosting providers, and the extent to which we expand our professional services to support future growth. Our gross margin may fluctuate from period to period based on the above factors.

##### *Subscriptions Gross Margin*

Subscriptions gross margin is primarily affected by the growth in our subscriptions revenue as compared to the growth in, and timing of, costs to support such revenue. We expect to continue to invest in customer support and cloud operations to support growth in our business, and the timing of those investments is expected to cause subscriptions gross margin to fluctuate on a quarterly basis.

##### *Professional Services Gross Margin*

Professional services gross margin is affected by the growth in our professional services revenue as compared to the growth in, and timing of, the cost of our Customer Success organization as we continue to invest in the growth of our business. Professional services gross margin is also impacted by the amount of services performed by subcontractors and partners as opposed to internal resources. In 2021, we had a lower usage of subcontractors and performed fewer in-person professional services engagements and deployments, both of which reduced certain classes of expenses and improved professional services margins. In 2022, these margins began to decline. In 2023, we expect professional services gross margin to be consistent with 2022; however, the margin remains subject to fluctuation based on the factors discussed above.

#### **Operating Expenses**

Operating expenses consist of sales and marketing, research and development, and general and administrative expenses. Personnel-related costs such as salaries, bonuses, commissions, payroll tax payments, and stock-based compensation expense are the most significant components of each of these expense categories. Other components of each category include professional fees for third-party services such as contract labor, legal, software development resources, and consulting as well as allocated overhead costs, which can include, among other types of costs, facility costs, travel and entertainment expenditures, human resources costs such as placement fees, referral bonuses, training costs, and employee relations spending, office-related expenditures, and information technology costs for such items as infrastructure, software, and cloud computing services.

In general, our operating expenses are expected to continue to increase in absolute dollars as we invest resources in growing our various teams. Our total employee headcount grew from 1,798 employees at December 31, 2021 to 2,307 employees at December 31, 2022. We expect to continue to hire new employees in order to support our anticipated revenue growth, although at a more measured rate than prior years.

#### *Sales and Marketing Expense*

Sales and marketing expense primarily includes personnel costs, including salaries, bonuses, commissions, stock-based compensation, and other personnel costs related to sales teams. Additional major expenses in this category include travel and entertainment, marketing activities and promotional events, subcontracting fees, and allocated overhead costs.

The number of employees in sales and marketing functions grew from 552 at December 31, 2021 to 730 at December 31, 2022. In order to continue to grow our business, geographical footprint, and brand awareness, we expect to continue investing resources in sales and marketing by increasing the number of sales and account management teams. As a result, we expect sales and marketing expense to increase in absolute dollars as we continue to invest to acquire new customers and further expand usage of our platform within our existing customer base.

#### *Research and Development Expense*

Research and development expense consists primarily of personnel costs for our employees who develop and enhance our platform, including salaries, bonuses, stock-based compensation, and other personnel costs. Also included are non-personnel costs such as subcontracting, consulting, and professional fees to third party development resources, and allocated overhead costs.

Our research and development efforts are focused on enhancing the capabilities, speed, and power of our software platform. The number of employees in research and development functions grew from 488 at December 31, 2021 to 652 at December 31, 2022. A portion of our headcount growth in 2022 was attributable to a new product development center opened in India. Although we expect research and development expense to continue to increase in absolute dollars as such costs are critical to maintain and improve the quality of applications and our competitive position, we believe our new product development center will result in cost savings over time.

#### *General and Administrative Expense*

General and administrative expense consists primarily of personnel costs, including salaries, bonuses, stock-based compensation, and other personnel costs for our administrative, legal, information technology, human resources, finance and accounting, as well as our senior executives. Additional expenses included in this category are non-personnel costs such as travel-related expenses, contracting and professional fees for such services as audits, taxation, and legal, insurance and other corporate expenses, including allocated overhead costs, and bad debt expenses.

The number of employees in general and administrative functions grew from 224 at December 31, 2021 to 316 at December 31, 2022. Additionally, we incurred significant legal costs in 2021 and 2022 in connection with two separate lawsuits involving an effort to enforce our intellectual property and to defend against reciprocal false advertising and related claims with a competitor. In 2023, we expect general and administrative expense to decrease in absolute dollars largely due to an anticipated decline in legal costs.

### ***Other Non-Operating Expense (Income)***

#### *Other Expense (Income), Net*

Other expense (income), net, consists primarily of unrealized and realized gains and losses related to changes in foreign currency exchange rates, interest income on our cash and cash equivalents and investments, gains or losses on the disposal of property and equipment, and other sources of income or expense not related to our core business operations.

#### *Interest Expense*

Interest expense consists primarily of interest on our debt, amortization of deferred financing fees, unused credit facility fees, and commitment fees on our letters of credit.

### **Results of Operations**

The following table sets forth our consolidated statements of operations data (in thousands):

	Year Ended December 31,		
	2022	2021	2020
<b>Revenue</b>			
Subscriptions	\$ 340,152	\$ 263,738	\$ 198,710
Professional services	127,839	105,521	105,863
<b>Total revenue</b>	<b>467,991</b>	<b>369,259</b>	<b>304,573</b>
<b>Cost of revenue</b>			
Subscriptions <sup>(1)</sup>	36,005	27,330	20,826
Professional services <sup>(1)</sup>	97,301	76,763	67,940
<b>Total cost of revenue</b>	<b>133,306</b>	<b>104,093</b>	<b>88,766</b>
<b>Gross profit</b>	<b>334,685</b>	<b>265,166</b>	<b>215,807</b>
<b>Operating expenses</b>			
Sales and marketing <sup>(1)</sup>	220,374	167,852	130,316
Research and development <sup>(1)</sup>	139,210	97,517	70,241
General and administrative <sup>(1)</sup>	120,111	83,704	53,152
<b>Total operating expenses</b>	<b>479,695</b>	<b>349,073</b>	<b>253,709</b>
<b>Operating loss</b>	<b>(145,010)</b>	<b>(83,907)</b>	<b>(37,902)</b>
<b>Other non-operating expense (income)</b>			
Other expense (income), net	3,545	3,584	(5,786)
Interest expense	1,673	372	478
<b>Total other non-operating expense (income)</b>	<b>5,218</b>	<b>3,956</b>	<b>(5,308)</b>
<b>Loss before income taxes</b>	<b>(150,228)</b>	<b>(87,863)</b>	<b>(32,594)</b>
Income tax expense	692	778	883
<b>Net loss</b>	<b>\$ (150,920)</b>	<b>\$ (88,641)</b>	<b>\$ (33,477)</b>

<sup>(1)</sup> Stock-based compensation as a component of these line items is as follows:

	Year Ended December 31,		
	2022	2021	2020
	(in thousands)		
<b>Cost of revenue</b>			
Subscriptions	\$ 996	\$ 1,199	\$ 943
Professional services	5,309	3,131	1,477
<b>Operating expenses</b>			
Sales and marketing	9,152	5,426	2,821
Research and development	12,523	5,224	2,718
General and administrative	10,850	8,864	7,320
Total stock-based compensation expense	\$ 38,830	\$ 23,844	\$ 15,279

The following table sets forth our consolidated statements of operations data expressed as a percentage of total revenue:

	Year Ended December 31,		
	2022	2021	2020
<b>Revenue</b>			
Subscriptions	72.7 %	71.4 %	65.2 %
Professional services	27.3	28.6	34.8
<b>Total revenue</b>	100.0	100.0	100.0
<b>Cost of revenue</b>			
Subscriptions	7.7	7.4	6.8
Professional services	20.8	20.8	22.3
<b>Total cost of revenue</b>	28.5	28.2	29.1
<b>Gross profit</b>	71.5	71.8	70.9
<b>Operating expenses</b>			
Sales and marketing	47.1	45.5	42.8
Research and development	29.7	26.4	23.1
General and administrative	25.7	22.7	17.5
<b>Total operating expenses</b>	102.5	94.6	83.4
<b>Operating loss</b>	(31.0)	(22.8)	(12.5)
<b>Other non-operating expense (income)</b>			
Other expense (income), net	0.8	1.0	(1.9)
Interest expense	0.4	0.1	0.2
<b>Total other non-operating expense (income)</b>	1.2	1.1	(1.7)
<b>Loss before income taxes</b>	(32.2)	(23.9)	(10.8)
Income tax expense	0.1	0.2	0.3
<b>Net loss</b>	(32.3)%	(24.1)%	(11.1)%

#### Year Ended December 31, 2022 Compared to the Year Ended December 31, 2021

##### *Revenue*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
<b>Revenue:</b>				
Subscriptions	\$ 340,152	\$ 263,738	\$ 76,414	29.0%
Professional services	127,839	105,521	22,318	21.2%
<b>Total revenue</b>	<b>\$ 467,991</b>	<b>\$ 369,259</b>	<b>\$ 98,732</b>	<b>26.7%</b>

Total revenue increased \$98.7 million, or 26.7%, in 2022 compared to 2021 due to an increase in our subscriptions revenue of \$76.4 million and an increase in our professional services revenue of \$22.3 million. The increase in subscriptions revenue was driven by a \$57.5 million increase in cloud subscription revenue, a \$16.6 million increase in on-premises software revenue, and a \$2.4 million increase in maintenance and support revenue. With respect to new versus existing customers, \$63.2 million of the increase in subscriptions revenue was derived from expanded deployments and corresponding sales of additional subscriptions to existing customers while \$13.2 million was driven from sales of subscriptions to new customers. The increase in professional services revenue was due to a \$9.2 million increase in revenue from existing customers coupled with a \$13.1 million increase in sales to new customers.

### *Cost of Revenue*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
<b>Cost of revenue:</b>				
Subscriptions	\$ 36,005	\$ 27,330	\$ 8,675	31.7%
Professional services	97,301	76,763	20,538	26.8%
<b>Total cost of revenue</b>	<b>\$ 133,306</b>	<b>\$ 104,093</b>	<b>\$ 29,213</b>	<b>28.1%</b>
Subscriptions gross margin	89.4 %	89.6 %		
Professional services gross margin	23.9 %	27.3 %		
Total gross margin	71.5 %	71.8 %		

Cost of revenue increased \$29.2 million, or 28.1%, in 2022 compared to 2021, primarily due to a \$17.2 million increase in professional services and product support personnel costs, a \$5.9 million increase in other cost of revenue, a \$2.9 million increase in contractor costs, a \$1.8 million increase in travel and entertainment expenses, and a \$1.4 million increase in overhead costs. Personnel costs increased due to an increase in professional services and product support personnel headcount of 14.0% from December 31, 2021 to December 31, 2022 in addition to increased wages and fringe benefits, coupled with a \$2.0 million increase in stock-based compensation. The increase in other cost of revenue was driven by increased hosting costs as sales of our cloud offering grew in 2022, while the increase in overhead costs was due largely to an increase in certain allocated costs tied to our growth such as spending for offices, human resources costs, and information technology expenses as well as allocated depreciation and amortization. Contractor costs increased in 2022 compared to 2021 due to an increase in the usage of subcontractors for professional service engagements. Travel and entertainment expenses increased primarily as a result of an increasing shift towards in-person engagements and activities as COVID restrictions eased in 2022.

Subscriptions gross margin was 89.4% in 2022 as compared to 89.6% in 2021. Professional services gross margin decreased to 23.9% in 2022 compared to 27.3% in 2021 due to higher personnel and allocated resources costs in 2022. These cost increases were partially offset by higher professional services revenue. Additionally, fewer in-person professional services engagements and deployments and a lower usage of subcontractors in 2021 led to temporarily improved margins in the prior year driven by impacts from the COVID-19 pandemic. Total gross margin fell slightly to 71.5% in 2022 as compared to 71.8% in 2021 driven largely by the higher cost of professional services revenue.

### *Sales and Marketing Expense*



	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Sales and marketing	\$ 220,374	\$ 167,852	\$ 52,522	31.3%
% of revenue	47.1 %	45.5 %		

Sales and marketing expense increased \$52.5 million, or 31.3%, in 2022 compared to 2021, primarily due to a \$33.3 million increase in sales and marketing personnel costs, a \$13.7 million increase in overhead costs, and a \$7.2 million increase in marketing costs. These increases were partially offset by a \$1.7 million decrease in professional fees. Personnel costs increased due to an increase in sales and marketing personnel headcount of 32.2% from December 31, 2021 to December 31, 2022 in addition to increased wages and fringe benefits, increased sales commissions driven by both contracts with new customers and renewals with existing customers, and a \$3.7 million increase in stock-based compensation expense. Overhead costs increased due to larger travel and entertainment expenses as return to office initiatives increased and more in-person sales and marketing events were held during 2022 as compared to 2021. Additionally, allocated costs tied to our growth increased in such areas as facilities, information technology, and human resources. Marketing costs increased due to an increase in the number of marketing events held year over year as well as increased spending on advertising and lead generation. These increases were slightly offset by lesser spending on marketing materials. Professional fees decreased due to lower engagement of and fees paid to third-party marketing consultants.

#### *Research and Development Expense*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Research and development	\$ 139,210	\$ 97,517	\$ 41,693	42.8%
% of revenue	29.7 %	26.4 %		

Research and development expense increased \$41.7 million, or 42.8%, in 2022 compared to 2021, primarily due to a \$34.6 million increase in research and development personnel costs, a \$5.4 million increase in overhead costs, and a \$1.6 million increase in professional fees. Personnel costs increased due to an increase in research and development personnel headcount of 33.6% from December 31, 2021 to December 31, 2022 in addition to increased wages and fringe benefits, coupled with a \$7.3 million increase in stock-based compensation expense. Overhead costs increased due largely to higher allocated costs tied to our growth, such as information technology spending related to cloud computing, human resources costs, and office spending. Professional fees increased due to an increase in consulting services fees driven by higher usage of external resources to assist in our platform development efforts.

#### *General and Administrative Expense*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
General and administrative expense	\$ 120,111	\$ 83,704	\$ 36,407	43.5%
% of revenue	25.7 %	22.7 %		

General and administrative expense increased \$36.4 million, or 43.5%, in 2022 compared to 2021, primarily due to a \$15.4 million increase in general and administrative personnel costs, a \$10.9 million increase in professional fees, and a \$10.1 million increase in overhead costs. Personnel costs increased due to an increase in general and administrative personnel headcount of 41.1% from December 31, 2021 to December 31, 2022 in addition to increased wages and fringe benefits, coupled with a \$2.0 million increase in stock compensation expense. Professional fees increased due largely to higher legal and consulting fees. Overhead costs increased primarily due to higher allocated costs tied to our growth in areas such as information technology

spending, human resources costs, and office spending as well as an increase in certain general corporate costs such as rent expense, depreciation, and bad debt expense.

### *Other Expense, Net*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Other expense, net	\$ 3,545	\$ 3,584	\$ (39)	(1.1)%
% of revenue	0.8 %	1.0 %		

Other expense, net was \$3.5 million in 2022 compared to other expense, net of \$3.6 million in 2021. There were \$6.1 million in foreign exchange losses in 2022 compared to \$3.7 million in foreign exchange losses in 2021. However, the increase in foreign exchange losses was offset by a \$1.2 million increase in other income attributable to a payment received in 2022 from a local government as a result of the Company achieving certain economic development criteria and a \$1.1 million increase in interest income.

### *Interest Expense*

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Interest expense	\$ 1,673	\$ 372	\$ 1,301	***
% of revenue	0.4 %	0.1 %		

\*\*\* - Indicates a percentage change that is not meaningful

Interest expense increased \$1.3 million in 2022 compared to the same period in 2021, primarily due to interest expense on the new term loan facility we entered into during the fourth quarter of 2022.

### **Year Ended December 31, 2021 Compared to the Year Ended December 31, 2020**

For a discussion and analysis of changes in financial condition and results of operations for the year ended December 31, 2021 as compared to the year ended December 31, 2020, refer to our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on February 17, 2022.

### **Backlog**

Backlog represents non-cancellable future amounts to be recognized under cloud and on-premises term license subscription agreements and is representative of our remaining performance obligations. As of December 31, 2022 and 2021, we had backlog of \$376.5 million and \$285.5 million, respectively. Approximately 35% of our backlog as of December 31, 2022 is not expected to be recognized in 2023. Additionally, we expect backlog to continue to increase in absolute dollars as we continue to increase the number of cloud agreements we enter into. However, the amount of backlog relative to the total value of our contracts can change from quarter to quarter and year to year for several reasons, including the specific timing and duration of cloud and term license subscription agreements with large customers, the specific timing of customer renewals, changes in customer financial circumstances, and foreign currency fluctuations. We often sign multiple-year cloud subscription agreements. Backlog may vary based on changes in the average non-cancellable term of a cloud and on-premises term license subscription agreements.

### **Non-GAAP Financial Measures**

To supplement its consolidated financial statements, which are prepared and presented in accordance with GAAP, we provide investors with certain non-GAAP financial performance measures. We use these non-GAAP financial performance

measures for financial and operational decision-making and as a means to evaluate period-to-period comparisons. Management believes these non-GAAP financial measures provide meaningful supplemental information regarding our performance by excluding certain expenses that may not be indicative of its recurring core business operating results. We believe both management and investors benefit from referring to these non-GAAP financial measures in assessing our performance and when planning, forecasting, and analyzing future periods. These non-GAAP financial measures also facilitate management's internal comparisons to historical performance as well as comparisons to competitors' operating results. We believe these non-GAAP financial measures are useful to investors both because (1) they allow for greater transparency with respect to measures used by management in its financial and operational decision-making and (2) they are used by institutional investors and the analyst community to help them analyze the health of our business.

The non-GAAP financial performance measures include non-GAAP net loss, non-GAAP net loss per share, and non-GAAP operating loss. These non-GAAP financial performance measures exclude the effect of stock-based compensation expense and certain litigation-related expenses consisting of legal and other professional fees which are not indicative of our core operating performance and are not part of our normal course of business. While these items may be recurring in nature and should not be disregarded in the evaluation of our earnings performance, it is useful to exclude such items when analyzing current results and trends compared to other periods as these items can vary significantly from period to period depending on specific underlying transactions or events that may occur. Therefore, while we may incur or recognize these types of expenses in the future, the Company believes removing these items for purposes of calculating the non-GAAP financial measures provides investors with a more focused presentation of our ongoing operating performance.

We also discuss adjusted EBITDA, a non-GAAP financial performance measure we believes offers a useful view of the overall operation of its businesses. We define adjusted EBITDA as net loss before (1) other expenses, net, (2) interest expense, (3) income tax expense, (4) depreciation and amortization, (5) stock-based compensation expense, and (6) litigation expenses directly associated with the Pegasystems cases. The most directly comparable GAAP financial measure to adjusted EBITDA is net loss. Users should consider the limitations of using adjusted EBITDA, including the fact this measure does not provide a complete measure of our operating performance. Adjusted EBITDA is not intended to purport to be an alternate to net loss as a measure of operating performance or to cash flows from operating activities as a measure of liquidity.

The presentation of these non-GAAP financial measures is not intended to be considered in isolation from, as a substitute for, or superior to the financial information prepared and presented in accordance with GAAP, and our non-GAAP measures may be different from non-GAAP measures used by other companies.

The following tables reconcile our non-GAAP measures to their nearest comparable GAAP measures. The reconciliation of GAAP operating loss to non-GAAP operating loss for the years ended December 31, 2022, 2021, and 2020 is as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
GAAP operating loss	\$ (145,010)	\$ (83,907)	\$ (37,902)
Add back:			
Stock-based compensation expense	38,830	23,844	15,279
Litigation expenses	22,886	16,400	—
Non-GAAP operating loss	<u>\$ (83,294)</u>	<u>\$ (43,663)</u>	<u>\$ (22,623)</u>

The following table reconciles GAAP net loss to non-GAAP net loss for the years ended December 31, 2022, 2021, and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
GAAP net loss	\$ (150,920)	\$ (88,641)	\$ (33,477)
Add back:			
Stock-based compensation expense	38,830	23,844	15,279
Litigation expenses	22,886	16,400	—
Loss on disposal of property and equipment	3	79	22
Non-GAAP net loss	<u>\$ (89,201)</u>	<u>\$ (48,318)</u>	<u>\$ (18,176)</u>

The following table sets forth non-GAAP net loss per share for the years ended December 31, 2022, 2021, and 2020 (in thousands except share and per share data):

	Year Ended December 31,		
	2022	2021	2020
Non-GAAP net loss	\$ (89,201)	\$ (48,318)	\$ (18,176)
Non-GAAP weighted average shares used to compute net loss per share, basic and diluted	72,455,175	71,036,490	69,050,565
Non-GAAP net loss per share, basic and diluted	<u>\$ (1.23)</u>	<u>\$ (0.68)</u>	<u>\$ (0.26)</u>

GAAP basic and diluted weighted average shares outstanding were equal to non-GAAP basic and diluted weighted average shares outstanding for each of the years ended December 31, 2022, 2021, and 2020.

The following table reconciles GAAP net loss per share to non-GAAP net loss per share for the years ended December 31, 2022, 2021, and 2020:

	Year Ended December 31,		
	2022	2021	2020
GAAP net loss per share, basic and diluted	\$ (2.08)	\$ (1.25)	\$ (0.48)
Add back:			
Non-GAAP adjustments to net loss per share	0.85	0.57	0.22
Non-GAAP net loss per share, basic and diluted	<u>\$ (1.23)</u>	<u>\$ (0.68)</u>	<u>\$ (0.26)</u>

The following table reconciles GAAP net loss to adjusted EBITDA for the years ended December 31, 2022, 2021, and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
GAAP net loss	\$ (150,920)	\$ (88,641)	\$ (33,477)
Other expense (income), net	3,545	3,584	(5,786)
Interest expense	1,673	372	478
Income tax expense	692	778	883
Depreciation and amortization of intangible assets	7,297	5,743	5,851
Stock-based compensation expense	38,830	23,844	15,279
Litigation expenses	22,886	16,400	—
Adjusted EBITDA	<u>\$ (75,997)</u>	<u>\$ (37,920)</u>	<u>\$ (16,772)</u>

## Liquidity and Capital Resources

The following table presents selected financial information and statistics pertaining to liquidity and capital resources as of and for the years ended December 31, 2022 and 2021 (in thousands):

	As of December 31,	
	2022	2021
Cash and cash equivalents	\$ 148,132	\$ 100,796
Short-term investments and marketable securities	47,863	55,179
Property and equipment, net	41,855	36,913
Long-term investments	—	12,044
Working capital*	149,996	121,752

\* Defined as current assets net of current liabilities, excluding the current portion of restricted cash

As of December 31, 2022, we had \$148.1 million of cash and cash equivalents and \$47.9 million of short-term investments and marketable securities. We believe our existing cash and cash equivalents and short-term investments and marketable securities, together with any positive cash flows from operations and available borrowings under our line of credit, will be sufficient to support working capital and capital expenditure requirements for at least the next 12 months.

We recently have, and in the future may enter into, investments in or acquisitions of complementary businesses, products, or technologies, which could also require us to seek additional equity financing, incur indebtedness, or use cash resources. We have no present binding agreements or commitments to enter into any such acquisitions. If we are unable to raise additional capital when desired, our business, operating results, and financial condition could be adversely affected.

### *Sources of Funds*

We have historically financed our operations in large part with equity financing arrangements. Through 2022, we have completed four public offerings and received net proceeds of \$344.8 million. Outside of equity offerings, we have financed our operations through sales of subscriptions and professional services.

To further help strengthen our financial position and support our growth initiatives, on November 3, 2022 we entered into a new Senior Secured Credit Facilities Credit Agreement (the "Credit Agreement") which provides for a five-year term loan facility in an aggregate principal amount of \$100.0 million and, in addition, up to \$50.0 million for a revolving credit facility, including a letter of credit sub-facility in the aggregate availability amount of \$15.0 million and a swingline sub-facility in the aggregate availability amount of \$10.0 million (as a sublimit of the revolving loan facility). On December 13, 2022, we executed the first amendment to the credit agreement which increased the aggregate principal amount of the term loan facility by \$20.0 million and increased the limit of the revolving facility by \$10.0 million.

The new Credit Agreement matures on November 3, 2027. We will use the proceeds from the \$120.0 million term loan to fund the continued growth of our business and support our working capital requirements. We were in compliance with all covenants as of December 31, 2022. As of December 31, 2022, we had no outstanding borrowings under the revolving credit facility. The new Credit Agreement replaced our existing line of credit that was in place as of September 30, 2022.

We expect future sources of funds to consist primarily of cash generated from sales of subscriptions and the related professional services. We may also elect to raise additional sources of funding through draws on our new revolving credit facility, entering into new debt financing arrangements, or conducting additional public offerings. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of spending to support research and development efforts, the expansion of sales and marketing activities, particularly internationally, the introduction of new and enhanced products and functions as well as platform enhancements and professional services offerings, and the level of market acceptance of our product.

### *Uses of Funds*

Our current principal uses of cash are funding operations and other working capital requirements. Historically, we have also utilized cash to acquire complementary businesses, and we may pursue similar opportunities in the future. Over the past several years, revenue has increased significantly from year to year and, as a result, cash flows from customer collections have also grown. However, as we continue to invest in growing our business, operating expenses have also increased. Outside of cash used to fund operations, other uses of cash in 2022 included capital expenditures related to the expansion of our headquarters and purchases of short-term investments. Cash uses in 2021 included the acquisition of Lana Labs, purchases of investments, and capital expenditures.

Furthermore, in July 2021, we executed a non-cancellable cloud hosting arrangement with Amazon Web Services (“AWS”) that contains provisions for minimum purchase commitments. Specifically, purchase commitments under the agreement total \$131.0 million over five years, including \$22.0 million in the first year, \$25.0 million in the second year, and \$28.0 million in each of the third, fourth, and fifth years. The timing of payments under the agreement may vary, and the total amount of payments may exceed the minimum depending on the volume of services utilized. Spending under this agreement for the year ended December 31, 2022 totaled \$33.1 million. In 2021, AWS spend totaled \$22.0 million, \$11.8 million of which was incurred under the new agreement.

### *Historical Cash Flows*

	<b>Year Ended December 31,</b>		<b>\$ Change</b>	<b>% Change</b>
	<b>2022</b>	<b>2021</b>		
	<b>(dollars in thousands)</b>			
Beginning cash, cash equivalents, and restricted cash	\$ 103,960	\$ 112,462	\$ (8,502)	(7.6)%
Operating activities:				
Net loss	(150,920)	(88,641)	(62,279)	70.3
Stock-based compensation and other non-cash adjustments	46,382	29,578	16,804	56.8
Changes in working capital	(2,013)	5,145	(7,158)	***
Net cash used by operating activities	(106,551)	(53,918)	(52,633)	97.6
Investing activities:				
Net cash provided by investing activities	10,264	41,936	(31,672)	(75.5)
Financing activities:				
Net cash provided by financing activities	142,867	2,786	140,081	***
Effect of exchange rates	(159)	694	(853)	***
Net increase (decrease) in cash, cash equivalents, and restricted cash	46,421	(8,502)	54,923	***
Ending cash, cash equivalents, and restricted cash	\$ 150,381	\$ 103,960	\$ 46,421	44.7 %

\*\*\* Indicates a percentage that is not meaningful.

### *Operating Activities*

Net cash used by operating activities was \$106.6 million for 2022 as compared to \$53.9 million used by operating activities for 2021. The increase in net cash used by operating activities was primarily due to a \$62.3 million increase in net losses, most notably driven by the increase in operating expenses as discussed above. In addition, the increase in cash used by operating activities for 2022 was attributed to an increase in the use of working capital of \$7.2 million. The change in working capital was primarily comprised of declines in accounts payable, prepaid assets, and accrued expenses, all due to timing of payments, partially offset by an increase in deferred revenue driven by higher cash payments from increases from subscription contracts.

### *Investing Activities*

Net cash provided by investing activities was \$10.3 million for 2022 as compared to \$41.9 million provided by investing activities for 2021. The change in net cash provided by investing activities was primarily impacted by a \$23.4 million increase in purchases of investments, a \$3.0 million increase in capital expenditures stemming from spending on the expansion of our headquarters, and a \$36.0 million decrease in proceeds from the sale of investments. Partially offsetting these changes was a \$30.7 million decrease related to the 2021 acquisition of Lana Labs.

### *Financing Activities*

Net cash provided by financing activities was \$142.9 million for 2022 as compared to \$2.8 million in net cash provided by financing activities for 2021. The increase in net cash provided by financing activities was primarily due to \$120.0 million in proceeds received from the new term loan facility and a \$22.6 million increase in proceeds received from the exercise of stock options primarily resulting from the vesting of the 2019 CEO stock options during 2022. These increases were partially offset by \$1.9 million in payments for debt issuance costs and a \$0.6 million principal payment on the term loan.

For a discussion and analysis of net cash used in or provided by operating, investing, and financing activities for the year ended December 31, 2020, refer to our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on February 17, 2022.

### **Critical Accounting Estimates**

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the U.S. requires us to make estimates and judgments that affect the amounts reported in those financial statements and accompanying notes. Although we believe the estimates we use are reasonable, due to the inherent uncertainty involved in making those estimates, actual results reported in future periods could differ from those estimates.

We believe the following accounting estimates involve a high degree of judgment and complexity. Accordingly, these are the estimates we believe are the most critical to aid in fully understanding and evaluating our consolidated financial condition and results of our operations. This commentary should be read in conjunction with our consolidated financial statements and the remainder of this Form 10-K.

#### ***Revenue Recognition***

We generate subscriptions revenue primarily through the sale of cloud subscriptions bundled with maintenance and support and hosting services and term license subscriptions bundled with maintenance and support. We generate professional services revenue from fees for our consulting services, including application development and deployment assistance and training related to our platform. Significant judgments and estimates inherent in our revenue recognition are as follows:

##### *Determining the Transaction Price*

The transaction price, or the amount of consideration we expect to be entitled to receive in exchange for transferring services to our customers, includes both fixed and variable components. The variable components of our contracts, which have been nominal to date, include performance penalties, extended payment terms or implied price concessions, and warranty refunds. If necessary, we estimate these components using the expected value method, which estimates variable consideration as the sum of probability-weighted amounts in a range of possible consideration amounts. We believe this method is the most appropriate to utilize because our variable components could vary by contract, leading to multiple potential outcomes.

Our variable consideration estimates are subject to subsequent true-up adjustments which may result in changes to transaction prices, but such true-up adjustments are not expected to be material. Variable consideration is also included in the transaction price only to the extent it is probable a significant reversal will not occur. Factors considered when determining to incorporate variable consideration in the transaction price include, but are not limited to, whether the variable consideration is highly susceptible to factors outside of the Company's influence, the length of time the uncertainty surrounding reversal is expected to last, our experience levels with similar types of contracts, our historical practices for similar contracts in similar

circumstances, and the number and range of possible consideration amounts. The amount of variable consideration excluded from the transaction price for the years ended December 31, 2022, 2021, and 2020 was insignificant.

#### *Allocating the Transaction Price Based on Standalone Selling Prices*

We allocate the transaction price to each performance obligation in a contract based on its relative standalone selling price, or SSP. The SSP is the observable price at which we sell the product or service separately. In the absence of observable pricing, we estimate SSP using the residual approach. We establish SSP as follows:

1. Cloud subscriptions - Given the highly variable selling price of our cloud subscriptions, we establish the SSP of our cloud subscriptions using a residual approach after first determining the SSP of consulting and training services.
2. On-premises term license subscriptions - Given the highly variable selling price of our term license subscriptions, we have established the SSP of term license subscriptions using a residual approach after first determining the SSP of maintenance and support. Maintenance and support is sold on a standalone basis with renewals of our legacy perpetual software licenses and within a narrow range of the net license fee, resulting in a defined economic relationship existing between the license and maintenance and support.
3. Maintenance and support - We establish the SSP of maintenance and support as a percentage of the stated net subscription fee based on observable pricing of maintenance and support renewals from our legacy perpetual software licenses.
4. Consulting services and training services - The SSP of consulting services and training services is established based on the observable pricing of standalone sales within each geographic region where the services are sold.

#### *Stock-Based Compensation*

We measure and recognize compensation expense for all instrument types, including stock options, awards with market conditions, and restricted stock units, or RSUs, based on the estimated fair value of the award on the grant date. The valuation of stock options requires management to make certain estimates and judgments as discussed below.

#### *Stock options*

In June 2022, our Board of Directors granted a stock option to purchase 700,000 shares of our Class A common stock granted to our Chief Executive Officer. This was the only stock option awarded during 2022, 2021, and 2020. See Note 11 to the consolidated financial statements for further discussion of the award. The valuation method requires the use of subjective assumptions, including but not limited to, the following:

1. The expected term of the option - The expected term represents the period of time the stock options are expected to be outstanding. Due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to otherwise estimate the expected term of the stock options, we use the simplified method to estimate the expected term. Under the simplified method, the expected term of an option is presumed to be the mid-point between the vesting date and the end of the contractual term.
2. Current trading price - The current price of our stock is based on the closing market price of our Class A common stock as quoted on the Nasdaq Global Market on the date of grant.
3. The expected stock price volatility - Expected volatility is based on the historical volatilities of our publicly traded stock. Expected volatility is sensitive to market- and company-specific conditions which may cause our stock price or the stock prices of our peers to fluctuate. Furthermore, expected volatility can be impacted by the companies we select as peers for inclusion in the analysis.
4. Expected dividend yield - We assume no dividend yield because dividends on our common stock are not expected to be paid in the near future, which is consistent with our history of not paying dividends on our common stock.
5. The risk-free interest rate - We utilize the yields of U.S. government securities, typically U.S. Treasury bonds, that have maturities commensurate with the expected term of the options.

#### *Income Taxes*



Significant judgment is required in determining our annual tax expense and in evaluating our tax positions. Tax law requires certain items to be included in our tax returns at different times than when the items are reflected in the financial statements. The annual tax expense reflected in the consolidated income statement is different than that reported in our tax returns. Some of these differences are permanent (for example, expenses recorded for accounting purposes that are not deductible in the returns such as certain entertainment expenses) and some differences are temporary and reverse over time, such as depreciation expense. Temporary differences create deferred tax assets and liabilities. Deferred tax liabilities generally represent income recognized in the financial statements for which payment has been deferred, or expense for which a deduction has been taken already in the tax return but the expense has not yet been recognized in the financial statements. Deferred tax assets generally represent items that can be used as a tax deduction or credit in tax returns in future years for which a benefit has already been recorded in the financial statements, as well as tax attributes, such as loss or credits, that can be carried over and used in future years.

Valuation allowances are established when necessary to reduce deferred income tax assets to the amounts we believe are more likely than not to be recovered. This requires us to make judgments and estimates regarding future reversals of existing taxable temporary differences, future taxable income, and the impact of tax planning strategies. As of December 31, 2022, we continued to maintain a full valuation allowance against U.S. deferred tax assets based on our cumulative operating results as of December 31, 2022, three-year cumulative loss, and an assessment of our expected future results of operations. We have evaluated all evidence, both positive and negative, in assessing the likelihood of realizability, and we determined the negative evidence outweighed the positive evidence.

As of December 31, 2022, we have a valuation allowance of \$18.7 million against gross foreign deferred tax assets of \$24.0 million, before deferred tax liability netting. Based on our cumulative operating results as of December 31, 2022 and assessment of our expected future results of operations, we determined it was not more likely than not we would be able to realize the remaining deferred tax assets prior to expiration.

Our tax positions are subject to income tax audits by multiple tax jurisdictions throughout the world. We recognize the tax benefit of an uncertain tax position only if it is more likely than not that the position is sustainable upon examination by the taxing authority. We measure the tax benefit recognized as the largest amount of benefit which is more likely than not to be realized upon settlement with the taxing authority. This determination involves significant judgment in estimating the impact of uncertainties in the application of GAAP and complex tax laws. As of December 31, 2022 and 2021, we have an unrecognized tax benefit of \$4.5 million and \$3.1 million, respectively, none of which would affect our effective tax rate if recognized due to the full valuation allowance against U.S. deferred tax assets.

We calculate the current and deferred income tax provision based on estimates and assumptions that could differ from the actual results reflected in income tax returns filed in subsequent years and record adjustments based on filed income tax returns when identified. The amount of income taxes paid is subject to examination by U.S. federal, state, and foreign tax authorities. The estimate of the potential outcome of any uncertain tax issue is subject to our assessment of relevant risks, facts, and circumstances existing at that time. To the extent the assessment of such tax position changes, we record the change in estimate in the period in which we make that determination.

#### **Recent Accounting Pronouncements**

See Note 2 of our consolidated financial statements for information related to recently issued accounting standards.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates and foreign currency exchange rates.

## **Interest Rate Risk**

We had cash and cash equivalents of \$148.1 million as of December 31, 2022, which consisted of investments in a money market fund, cash in readily available checking accounts, and overnight repurchase investments. These securities, which are not dependent on interest rate fluctuations that may cause principal amounts to fluctuate, are held for reinvestment and working capital purposes or, in the case of restricted cash, to settle an escrow liability established pursuant to a business combination.

In addition, as of December 31, 2022, we held \$47.9 million of fixed income securities such as U.S. treasury bonds, commercial paper, corporate bonds, agency bonds, and asset-backed securities. These securities are subject to market risk due to fluctuations in interest rates, which may affect our interest income and the fair value of our investments. We classify investments as available-for-sale, including those with stated maturities beyond 12 months. As such, no gains or losses due to changes in interest rates are recognized in our consolidated statements of operations unless such securities are sold prior to maturity or due to expected credit losses. A hypothetical 100 basis point change in interest rates would not have had a material effect on the fair market value of our investment portfolio as of December 31, 2022. To date, fluctuations in interest income have also not been significant. Our investments are made for the purpose of preserving capital, fulfilling liquidity needs, and maximizing total return. We do not enter into investments for trading or speculative purposes.

As of December 31, 2022, we had outstanding debt of \$119.4 million, which carries interest as defined in our Credit Agreement. Refer to Note 9 of the consolidated financial statements in this 2022 Annual Report for additional details. We assessed our exposure to changes in interest rates by analyzing sensitivity to our operating results assuming various changes in market interest rates. A hypothetical increase of one percentage point in the interest rate as of December 31, 2022 would increase our interest expense by approximately \$1.2 million annually.

## **Inflation Risk**

We are exposed to market risks related to inflation in personnel costs, third-party service providers, subcontracting costs, professional fees, and general overhead expenses. During 2022, inflation has increased to rates beyond recent history, and as a result we have experienced rising costs. If these inflation pressures continue or increase in severity, we may not be able to fully offset such higher costs through price increases and productivity initiatives. While we do not believe inflation has had a material impact on our results of operations to date, continued high rate of inflation in the future may have an adverse effect on our ability to maintain operating costs and adversely affect our gross profit margin.

## **Foreign Currency Exchange Risk**

Our reporting currency is the U.S. dollar. Due to our international operations, we have foreign currency risks related to revenue and operating expenses denominated in currencies other than the U.S. dollar, primarily the British pound sterling, Euro, Australian dollar, and Swiss franc. Our sales contracts are primarily denominated in the local currency of the customer making the purchase. In addition, portions of operating expenses are incurred outside the United States and are denominated in foreign currencies. An increase in the relative value of the U.S. dollar to other currencies will negatively affect revenue and other operating results as expressed in U.S. dollars. Based on a sensitivity analysis, a 10% change in the foreign currency exchange rates would have impacted our total revenue by approximately 3% and our operating loss by approximately 2%. This calculation assumes all currencies change in the same direction and proportion relative to the U.S. dollar.

We have experienced, and will continue to experience, fluctuations in net loss as a result of transaction gains or losses related to remeasuring certain current asset and current liability balances denominated in currencies other than the functional currency of the entities in which they are recorded. We have not engaged in the hedging of foreign currency transactions to date, although we may choose to do so in the future.

**Item 8. Financial Statements and Supplementary Data**

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## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
Appian Corporation  
McLean, Virginia

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Appian Corporation (the “Company”) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive loss, changes in stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and our report dated February 16, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

### Revenue Recognition for Multiple Performance Obligations

As discussed in Note 3 to the consolidated financial statements, certain of the Company's revenue contracts contain multiple performance obligations that might include cloud subscriptions, term license subscriptions, maintenance and support and professional services. The Company accounts for individual products and services separately if they are capable of being distinct and are distinct within the context of the contract. In such cases, the transaction price is allocated to the distinct performance obligations based on their relative standalone selling price or residual approach and revenue is recognized when control of the distinct performance obligation is transferred.

We identified the identification of distinct performance obligations and the determination of standalone selling prices as a critical audit matter. Auditing these elements of revenue recognition was especially challenging due to the significant judgment involved in assessing the completeness of the distinct performance obligations in arrangements containing multiple performance obligations. In addition, the evaluation of the reasonableness of the range of prices used to establish the standalone selling price for maintenance and support and professional services was complex, which directly affects the amount of cloud and term license subscriptions revenue recognized using the residual approach.

The primary procedures we performed to address this critical audit matter included:

- Testing the design and operating effectiveness of internal controls over the Company's revenue recognition process including controls over: (i) the identification of distinct performance obligations, and (ii) the determination of standalone selling prices for the distinct performance obligations.
- Testing a sample of revenue contracts and underlying order documents to evaluate management's identification of distinct performance obligations.
- Evaluating the reasonableness of management's analysis supporting the standalone selling prices by tracing, on a sample basis, revenue transactions to the underlying source documents and recalculating the mathematical accuracy of the analysis.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2013.

McLean, Virginia  
February 16, 2023

## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
Appian Corporation  
McLean, Virginia

### Opinion on Internal Control over Financial Reporting

We have audited Appian Corporation's (the "Company's") internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and our report dated February 16, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A, Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of internal control over financial reporting in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ BDO USA, LLP

McLean, Virginia  
February 16, 2023

**APPIAN CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
*(in thousands, except share and per share data)*

	As of December 31,	
	2022	2021
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 148,132	\$ 100,796
Short-term investments and marketable securities	47,863	55,179
Accounts receivable, net of allowance of \$2,125 and \$1,400, respectively	165,964	130,049
Deferred commissions, current	30,196	24,668
Prepaid expenses and other current assets	28,093	26,781
Restricted cash, current	2,249	791
<b>Total current assets</b>	<b>422,497</b>	<b>338,264</b>
Property and equipment, net of accumulated depreciation of \$18,864 and \$14,106, respectively	41,855	36,913
Long-term investments	—	12,044
Goodwill	26,349	27,795
Intangible assets, net of accumulated amortization of \$2,715 and \$1,260, respectively	5,251	7,144
Operating right-of-use assets	37,248	27,897
Deferred commissions, net of current portion	55,788	49,017
Deferred tax assets	1,940	1,025
Restricted cash, net of current portion	—	2,373
Other assets	3,286	2,047
<b>Total assets</b>	<b>\$ 594,214</b>	<b>\$ 504,519</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 7,997	\$ 5,766
Accrued expenses	12,227	15,483
Accrued compensation and related benefits	40,718	35,126
Deferred revenue, current	194,768	150,169
Debt, current	2,740	—
Operating lease liabilities, current	8,681	8,110
Other current liabilities	3,121	1,067
<b>Total current liabilities</b>	<b>270,252</b>	<b>215,721</b>
Long-term debt	115,379	—
Operating lease liabilities	57,225	48,784
Deferred revenue	5,556	2,430
Deferred tax liabilities	102	209
Other non-current liabilities	—	3,458
<b>Total liabilities</b>	<b>448,514</b>	<b>270,602</b>
<b>Commitments and contingent liabilities (see Note 4 and Note 14)</b>		
<b>Stockholders' equity</b>		
Class A common stock—par value \$0.0001; 500,000,000 shares authorized and 41,320,091 shares issued and outstanding as of December 31, 2022; 500,000,000 shares authorized and 39,964,298 shares issued and outstanding as of December 31, 2021	4	4
Class B common stock—par value \$0.0001; 100,000,000 shares authorized and 31,497,796 shares issued and outstanding as of December 31, 2022; 100,000,000 shares authorized and 31,497,796 shares issued and outstanding as of December 31, 2021	3	3
Additional paid-in capital	561,390	497,128
Accumulated other comprehensive loss	(7,246)	(5,687)
Accumulated deficit	(408,451)	(257,531)
<b>Total stockholders' equity</b>	<b>145,700</b>	<b>233,917</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 594,214</b>	<b>\$ 504,519</b>

*The accompanying notes are an integral part of these consolidated financial statements.*



**APIAN CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

*(in thousands, except share and per share data)*

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Revenue</b>			
Subscriptions	\$ 340,152	\$ 263,738	\$ 198,710
Professional services	127,839	105,521	105,863
<b>Total revenue</b>	<b>467,991</b>	<b>369,259</b>	<b>304,573</b>
<b>Cost of revenue</b>			
Subscriptions	36,005	27,330	20,826
Professional services	97,301	76,763	67,940
<b>Total cost of revenue</b>	<b>133,306</b>	<b>104,093</b>	<b>88,766</b>
<b>Gross profit</b>	<b>334,685</b>	<b>265,166</b>	<b>215,807</b>
<b>Operating expenses</b>			
Sales and marketing	220,374	167,852	130,316
Research and development	139,210	97,517	70,241
General and administrative	120,111	83,704	53,152
<b>Total operating expenses</b>	<b>479,695</b>	<b>349,073</b>	<b>253,709</b>
<b>Operating loss</b>	<b>(145,010)</b>	<b>(83,907)</b>	<b>(37,902)</b>
<b>Other non-operating expense (income)</b>			
Other expense (income), net	3,545	3,584	(5,786)
Interest expense	1,673	372	478
<b>Total other non-operating expense (income)</b>	<b>5,218</b>	<b>3,956</b>	<b>(5,308)</b>
<b>Loss before income taxes</b>	<b>(150,228)</b>	<b>(87,863)</b>	<b>(32,594)</b>
Income tax expense	692	778	883
<b>Net loss</b>	<b>\$ (150,920)</b>	<b>\$ (88,641)</b>	<b>\$ (33,477)</b>
Net loss per share:			
Basic and diluted	\$ (2.08)	\$ (1.25)	\$ (0.48)
<b>Weighted average common shares outstanding:</b>			
Basic and diluted	72,455,175	71,036,490	69,050,565

*The accompanying notes are an integral part of these consolidated financial statements.*

**APPIAN CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
*(in thousands)*

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Net loss</b>	\$ (150,920)	\$ (88,641)	\$ (33,477)
Comprehensive loss, net of income taxes			
Foreign currency translation adjustments	(1,559)	(677)	(4,703)
Unrealized losses on available-for-sale securities	—	—	(22)
<b>Total other comprehensive loss, net of income taxes</b>	<u>\$ (152,479)</u>	<u>\$ (89,318)</u>	<u>\$ (38,202)</u>

*The accompanying notes are an integral part of these consolidated financial statements.*

**APPIAN CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
*(in thousands, except share data)*

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balance December 31, 2019</b>	67,468,022	\$ 6	\$ 340,929	\$ (285)	\$ (135,413)	\$ 205,237
Net loss	—	—	—	—	(33,477)	(33,477)
Issuance of common stock from public offering, net of issuance costs	1,931,206	1	107,914	—	—	107,915
Issuance of common stock to directors	7,942	—	—	—	—	—
Vesting of restricted stock units	270,609	—	—	—	—	—
Exercise of stock options	1,001,411	—	6,376	—	—	6,376
Stock-based compensation expense	—	—	15,279	—	—	15,279
Other comprehensive loss	—	—	—	(4,725)	—	(4,725)
<b>Balance December 31, 2020</b>	70,679,190	7	470,498	(5,010)	(168,890)	296,605
Net loss	—	—	—	—	(88,641)	(88,641)
Issuance of common stock to directors	4,950	—	—	—	—	—
Vesting of restricted stock units	354,130	—	—	—	—	—
Exercise of stock options	423,824	—	2,786	—	—	2,786
Stock-based compensation expense	—	—	23,844	—	—	23,844
Other comprehensive loss	—	—	—	(677)	—	(677)
<b>Balance December 31, 2021</b>	71,462,094	7	497,128	(5,687)	(257,531)	233,917
Net loss	—	—	—	—	(150,920)	(150,920)
Issuance of common stock to directors	14,928	—	—	—	—	—
Vesting of restricted stock units	403,648	—	—	—	—	—
Exercise of stock options	937,217	—	25,432	—	—	25,432
Stock-based compensation expense	—	—	38,830	—	—	38,830
Other comprehensive loss	—	—	—	(1,559)	—	(1,559)
<b>Balance December 31, 2022</b>	72,817,887	\$ 7	\$ 561,390	\$ (7,246)	\$ (408,451)	\$ 145,700

*The accompanying notes are an integral part of these consolidated financial statements.*

**APPIAN CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)

	Year Ended December 31,		
	2022	2021	2020
<b>Cash flows from operating activities:</b>			
Net loss	\$ (150,920)	\$ (88,641)	\$ (33,477)
<b>Adjustments to reconcile net loss to net cash used by operating activities:</b>			
Stock-based compensation	38,830	23,844	15,279
Depreciation and amortization of intangible assets	7,297	5,743	5,851
Bad debt expense	1,298	410	984
Amortization of debt issuance costs	43	—	—
Loss on disposal of property and equipment	3	79	22
Change in fair value of available-for-sale securities	—	—	22
Deferred income taxes	(1,089)	(498)	(184)
<b>Changes in assets and liabilities:</b>			
Accounts receivable	(37,922)	(33,904)	(33,559)
Prepaid expenses and other assets	(2,027)	2,094	3,740
Deferred commissions	(12,298)	(21,588)	(8,575)
Accounts payable and accrued expenses	(3,289)	11,467	(4,238)
Accrued compensation and related benefits	6,582	12,598	11,801
Other current and non-current liabilities	(264)	(444)	3,681
Deferred revenue	47,534	33,378	27,626
Operating lease assets and liabilities	(329)	1,544	3,407
<b>Net cash used by operating activities</b>	<b>(106,551)</b>	<b>(53,918)</b>	<b>(7,620)</b>
<b>Cash flows from investing activities:</b>			
Proceeds from investments	84,642	120,593	—
Purchases of investments	(65,283)	(41,870)	(145,968)
Purchases of property and equipment	(9,095)	(6,058)	(1,251)
Payments for acquisitions, net of cash acquired	—	(30,729)	(6,138)
<b>Net cash provided by (used by) investing activities</b>	<b>10,264</b>	<b>41,936</b>	<b>(153,357)</b>
<b>Cash flows from financing activities:</b>			
Proceeds from borrowings	120,000	—	—
Payments for debt issuance costs	(1,940)	—	—
Debt repayments	(625)	—	—
Proceeds from exercise of common stock options	25,432	2,786	6,376
Proceeds from public offerings, net of underwriting discounts	—	—	108,260
Payments of costs related to public offerings	—	—	(346)
Principal payments on finance leases	—	—	(3,822)
<b>Net cash provided by financing activities</b>	<b>142,867</b>	<b>2,786</b>	<b>110,468</b>
<b>Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash</b>	<b>(159)</b>	<b>694</b>	<b>3,216</b>
<b>Net increase (decrease) in cash, cash equivalents, and restricted cash</b>	<b>46,421</b>	<b>(8,502)</b>	<b>(47,293)</b>
<b>Cash, cash equivalents, and restricted cash at beginning of period</b>	<b>103,960</b>	<b>112,462</b>	<b>159,755</b>
<b>Cash, cash equivalents, and restricted cash at end of period</b>	<b>\$ 150,381</b>	<b>\$ 103,960</b>	<b>\$ 112,462</b>
<b>Supplemental cash flow information:</b>			
Cash paid for interest	\$ 1,671	\$ 323	\$ 165
Cash paid for income taxes	\$ 1,239	\$ 1,505	\$ 1,182
<b>Supplemental non-cash investing and financing information:</b>			
Accrued capital expenditures	\$ 1,774	\$ 379	\$ —

*The accompanying notes are an integral part of these consolidated financial statements.*

## **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

### **1. Organization and Description of Business**

Appian Corporation (together with its subsidiaries, “Appian,” the “Company,” “we,” or “our”) is a software company that automates business processes. The Appian Platform includes everything you need to design, automate, and optimize even the most complex processes, from start to finish. The world's most innovative organizations trust Appian to improve their workflows, unify data, and optimize operations—resulting in better growth and superior customer experiences.

We are headquartered in McLean, Virginia and operate both in the U.S. and internationally including Australia, Canada, France, Germany, India, Italy, Japan, Mexico, the Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

### **2. Accounting Policies**

#### ***Basis of Presentation***

The accompanying consolidated financial statements and footnotes have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) as contained in the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”).

#### ***Use of Estimates***

The preparation of our consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and judgments that affect the amounts reported in these consolidated financial statements and accompanying notes. Although we believe the estimates we use are reasonable, due to the inherent uncertainty involved in making these estimates, actual results reported in future periods could differ from those estimates.

Significant estimates embedded in the consolidated financial statements include, but are not limited to, revenue recognition, income taxes and the related valuation allowance, costs to obtain a contract with a customer, and stock-based compensation.

#### ***Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of Appian and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

#### ***Segment Reporting***

Operating segments are defined as components of an enterprise for which discrete financial information is available that is evaluated regularly by the chief operating decision maker (“CODM”) for purposes of allocating resources and evaluating financial performance. We have determined our CODM is our Chief Executive Officer.

We operate one operating and reportable segment, representing our consolidated business that helps organizations build applications and workflows rapidly with our low-code platform to maximize their resources and improve business results. Our reportable segment determination is based on our management and internal reporting structure, the nature of the subscriptions and services we offer, and the financial information evaluated regularly by our CODM.

#### ***Revenue Recognition***

Refer to Note 3 for a detailed discussion on specific revenue recognition principles related to our major revenue streams.

**APPIAN CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

***Concentration of Credit and Customer Risk***

Our financial instruments exposed to concentration of credit and customer risk consist primarily of cash, cash equivalents, restricted cash, accounts receivable, and our short- and long-term investments. Deposits held with banks may exceed the amount of insurance provided on such deposits; however, we believe the financial institutions holding our cash deposits are financially sound and, accordingly, minimal credit risk exists with respect to these balances.

With regard to our customers, credit evaluation and account monitoring procedures are used to minimize the risk of loss. Revenue generated from government agencies represented 19.2%, 19.6%, and 18.1% of our revenue for the years ended December 31, 2022, 2021, and 2020, respectively, of which the top three U.S. federal government agencies generated 4.5%, 5.6%, and 6.6% of our revenue for the years ended December 31, 2022, 2021, and 2020, respectively. Additionally, 33.5%, 34.0%, and 33.8% of our revenue during the years ended December 31, 2022, 2021, and 2020, respectively, was generated from international customers.

***Cash, Cash Equivalents, and Restricted Cash***

We consider all highly liquid investments with original maturities of three months or less at the date of purchase, as well as overnight repurchase agreements, to be cash equivalents. Restricted cash consists of cash designated to settle an escrow liability stemming from our acquisition of Lana Labs GmbH (“Lana Labs”). The remaining balance as of December 31, 2022 is due on August 11, 2023.

The following table presents a reconciliation of cash, cash equivalents, and restricted cash as presented in the consolidated statements of cash flows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Cash and cash equivalents	\$ 148,132	\$ 100,796	\$ 112,462
Restricted cash, current	2,249	791	—
Restricted cash, non-current	—	2,373	—
Total cash, cash equivalents, and restricted cash	<u>\$ 150,381</u>	<u>\$ 103,960</u>	<u>\$ 112,462</u>

***Accounts Receivable and Allowance for Doubtful Accounts***

Accounts receivable are stated at realizable value, net of an allowance for doubtful accounts. The allowance for doubtful accounts is based on our assessment of the collectability of accounts and incorporates an estimation of expected lifetime credit losses on our receivables. We regularly review the composition of the accounts receivable aging, historical bad debts, changes in payment patterns, customer creditworthiness, and current economic trends. If the financial condition of our customers were to deteriorate, resulting in their inability to make required payments, additional provisions for doubtful accounts would be required and would increase bad debt expense.

Activity in the allowance for doubtful accounts was as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Beginning balance	\$ 1,400	\$ 1,400	\$ 600
Additions	1,298	410	984
Less: Write-offs, net of recoveries	(573)	(410)	(184)
Ending balance	<u>\$ 2,125</u>	<u>\$ 1,400</u>	<u>\$ 1,400</u>

**APIAN CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

***Assets Recognized from the Costs to Obtain a Contract with a Customer***

We capitalize incremental costs of obtaining a contract with a customer, which consists of sales commissions paid to our sales team. These costs are recorded as deferred commissions in the consolidated balance sheets. Costs to obtain a contract for a new customer or upsell are amortized over an estimated economic life of five years as sales commissions on initial sales are not commensurate with sales commissions on contract renewals. We determine the estimated economic life based on both qualitative and quantitative factors such as customer attrition, expected renewals, product life cycles, and contractual terms. We periodically review the carrying amount of deferred contract acquisition costs to determine whether events or changes in circumstances have occurred that could impact the estimated economic life. Commissions paid relating to contract renewals are deferred and amortized over the related renewal period. Costs to obtain a contract for professional services arrangements are expensed as incurred as the contractual period of our professional services arrangements are one year or less.

Amortization associated with deferred commissions is recorded to sales and marketing expense in our consolidated statements of operations. The following table summarizes the activity of costs to obtain a contract with a customer for the years ended December 31, 2022, and 2021 (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Beginning balance	\$ 73,685	\$ 52,097
Additional contract costs deferred	49,816	51,283
Amortization of deferred contract costs	(37,517)	(29,695)
Ending balance	<u>\$ 85,984</u>	<u>\$ 73,685</u>

Commission expense was \$39.4 million, \$32.4 million, and \$23.3 million for the years ended December 31, 2022, 2021, and 2020, respectively.

***Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Significant additions or improvements extending the useful life of an asset are capitalized, while repairs and maintenance costs which do not significantly improve the related assets or extend their useful lives are charged to expense as incurred.

The following table outlines the useful lives of our major asset categories:

<b>Asset Category</b>	<b>Useful Life (in years)</b>
Computer software	3
Computer hardware	3
Equipment	5
Office furniture and fixtures	10
Leasehold improvements	(a)

(a) - Leasehold improvements have an estimated useful life of the shorter of the useful life of the assets or the lease term.

***Business Combinations***

We account for business combinations using the acquisition method of accounting as of the business combination date. Under this method, we allocate the fair value of purchase consideration to identifiable tangible and intangible assets acquired and liabilities assumed at their estimated fair values on the acquisition date. The excess of the consideration transferred over the fair value of the identifiable net assets acquired is recorded as goodwill and represents the future economic benefits expected to arise from other intangible assets acquired that do not qualify for separate recognition, including assembled workforce, non-contractual relationships, and expected future synergies. Determining the fair value of assets acquired and liabilities assumed requires us to use significant judgments and estimates, including the selection of valuation methodologies, estimates of future revenue, costs, and cash flows, and discount rates.

During the measurement period, which can be up to one year from the acquisition date, these estimates may be refined, as necessary, and we may record adjustments to the fair value of tangible and intangible assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or the final determination of the fair value of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to our consolidated statements of operations. Acquisition related expenses and post-acquisition integration costs are recognized separately from the business combination and are expensed as incurred.

#### ***Impairment of Long-Lived Assets***

Long-lived tangible assets and intangible assets with definite useful lives are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable through undiscounted cash flows from the use of the assets. If such assets are considered to be impaired, the assets are written down to their estimated fair value.

Goodwill is accounted for at the segment level and allocated to, and tested for impairment at, a level referred to as the reporting unit. We have determined our one segment consists of a single reporting unit. We test for impairment annually on the first day of our fourth quarter or between annual tests if events or changes in circumstances indicate the fair value of our reporting unit may be below its carrying amount. We have the option to qualitatively assess whether it is more likely than not the fair value our reporting unit is less than its carrying value. If we elect to perform a qualitative assessment and conclude it is more likely than not the fair value of the reporting unit is equal to or greater than its carrying value, no further assessment of that reporting unit's goodwill is necessary; otherwise, goodwill must be tested for impairment. In 2022, we elected to not perform the optional qualitative assessment of goodwill and instead performed the quantitative impairment test.

When performing the quantitative test, we determine the fair value of the reporting unit and compare it to the carrying amount, including goodwill. If the carrying amount of the reporting unit exceeds the fair value of the reporting unit, the reporting unit's goodwill is impaired, and we must recognize an impairment loss for the difference between the carrying amount and the fair value of the reporting unit. We estimate the fair value of our reporting unit using a market-based valuation methodology, which is primarily based on our consolidated market capitalization plus a reasonable control premium.

In the fourth quarter of 2022, we completed our annual goodwill impairment test for our reporting unit, and the results of the test indicated the estimated fair value of our reporting unit significantly exceeded the carrying value.

#### ***Investments and Fair Value of Financial Instruments***

Refer to Note 17 for a detailed discussion on our policies specific to investments and determining fair value.

#### ***Stock-Based Compensation***

We account for stock-based compensation expense related to stock-based awards based on the estimated fair value of the award on the grant date. We calculate the fair value of stock options containing only a service condition using the Black-Scholes option pricing model. The fair value of restricted stock units ("RSUs") is based on the closing market price of our common stock on the Nasdaq Global Market on the date of grant. For service-based awards such as RSUs, stock-based compensation expense is recognized on a straight-line basis over the requisite service period. For awards that contain market conditions, compensation expense is measured using a Monte Carlo simulation and is recognized using the accelerated attribution method over the derived service period based on the expected market performance as of the grant date. We account for forfeitures as they occur rather than estimating expected forfeitures. Refer to Note 11 for additional information related to stock-based compensation.

#### ***Leases***

We combine and account for lease and non-lease components as a single lease component for leases of our facilities. The discount rates related to the our lease liabilities are based on estimates of our incremental borrowing rate on a secured basis, as the discount rates implicit in our lease agreements cannot be readily determined.



***Basic and Diluted Loss per Common Share***

We compute net loss per common share using the two-class method required for multiple classes of common stock and participating securities. The rights, including the liquidation and dividend rights, of the Class A common stock and Class B common stock are substantially identical, other than voting and conversion rights. Accordingly, the Class A common stock and Class B common stock share equally in our net losses.

Basic net loss per common share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per common share is computed by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period increased by common shares that could be issued upon the conversion or exercise of other outstanding securities to the extent those additional common shares would be dilutive. The dilutive effect of potentially dilutive securities is reflected in diluted net loss per share by application of the treasury stock method.

***Income Taxes***

We use the asset and liability method of accounting for income taxes in which deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax bases. We measure deferred tax assets and liabilities using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recoverable or settled. We recognize the effect on deferred tax assets and liabilities of a change in tax rates as income and expense in the period that includes the enactment date. A valuation allowance is established if it is more likely than not that all or a portion of the deferred tax asset will not be realized.

Our tax positions are subject to income tax audits by multiple tax jurisdictions throughout the world. We recognize the tax benefit of an uncertain tax position only if it is more likely than not the position is sustainable upon examination by the taxing authority. We measure the tax benefit recognized as the largest amount of benefit which is more likely than not to be realized upon settlement with the taxing authority. We recognize penalties and interest related to unrecognized tax benefits as income tax expense.

We calculate the current and deferred income tax provision based on estimates and assumptions that could differ from the actual results reflected in income tax returns filed in subsequent years and record adjustments based on filed income tax returns when identified. The amount of income taxes paid is subject to examination by U.S. federal, state, and foreign tax authorities. The estimate of the potential outcome of any uncertain tax issue is subject to our assessment of relevant risks, facts, and circumstances existing at that time. To the extent the assessment of such tax position changes, we record the change in estimate in the period in which we make that determination.

***Foreign Currency***

Our operations located outside of the United States where the local currency is the functional currency are translated into U.S. dollars using the current rate method. Results of operations are translated at the average rate of exchange for the period. Assets and liabilities are translated at the closing rates on the balance sheet date. Gains and losses on translation of these accounts are accumulated and reported as a separate component of stockholders' equity and other comprehensive loss.

Gains and losses on foreign currency transactions are recognized in the accompanying consolidated statements of operations as a component of Other expense (income), net. Gains and losses from transactions denominated in foreign currencies resulted in net transaction losses of \$6.1 million, net transaction losses of \$3.7 million, and net transaction gains of \$4.3 million for the years ended December 31, 2022, 2021, and 2020, respectively.

***Research and Development***

Research and development expenses include payroll, employee benefits, and other headcount-related costs associated with product development. Our product utilizes a common codebase, whether accessed by customers via the cloud or via an on-premises installation. Since our software is sold and licensed externally, we consider our software as external-use software for purposes of applying the capitalized software development guidance. Product development costs are expensed as incurred until

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technological feasibility has been established, which is defined as the completion of all planning, designing, coding, and testing activities necessary to establish products that meet design specifications including functions, features, and technical performance requirements. We have determined technological feasibility for our software products is reached shortly before they are released for sale. Costs incurred after technological feasibility is established are not significant, and accordingly we expense all research and development costs when incurred.

***Advertising Expenses***

We expense advertising costs as they are incurred. Advertising expenses were \$5.8 million, \$4.4 million, and \$6.0 million for the years ended December 31, 2022, 2021, and 2020, respectively.

***Recent Accounting Pronouncements***

We did not adopt any new accounting guidance in 2022 that had a material impact on our consolidated financial statements or disclosures. Additionally, there is no pending accounting guidance that we expect to have a material impact on our consolidated financial statements.

**3. Revenue**

***Revenue Recognition***

We generate subscriptions revenue primarily through the sale of cloud subscriptions bundled with maintenance and support and hosting services as well as term license subscriptions bundled with maintenance and support. We generate professional services revenue from fees for our consulting services, including application development and deployment assistance as well as training related to our platform.

The following table summarizes revenue recorded during the years ended December 31, 2022, 2021, and 2020 (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Cloud subscriptions	\$ 236,922	\$ 179,415	\$ 129,219
Term license subscriptions	79,753	63,203	51,415
Maintenance and support	23,477	21,120	18,076
Total subscriptions	340,152	263,738	198,710
Professional services	127,839	105,521	105,863
Total revenue	\$ 467,991	\$ 369,259	\$ 304,573

***Performance Obligations and Timing of Revenue Recognition***

We primarily sell products and services that fall into the categories discussed below. Each category contains one or more performance obligations that are either (1) capable of being distinct (i.e., the customer can benefit from the product or service on its own or together with readily available resources, including those purchased separately from us) and distinct within the context of the contract (i.e., separately identified from other promises in the contract) or (2) a series of distinct products or services that are substantially the same and have the same pattern of transfer to the customer. Our term license subscriptions are delivered at a point in time while our cloud subscriptions, maintenance and support, and professional services are delivered over time.

***Subscriptions Revenue***

Subscriptions revenue is primarily related to (1) cloud subscriptions bundled with maintenance and support and hosting services and (2) term license subscriptions bundled with maintenance and support. We generally charge subscription fees on a per-user basis or through non-user based single application licenses. We bill customers and collect payment for subscriptions to

our platform in advance on an annual, quarterly, or monthly basis. In certain instances, our customers have paid their entire contract up front.

### **Cloud Subscriptions**

We generate cloud-based subscriptions revenue primarily from the sales of subscriptions to access our cloud offering, together with related support services to our customers. We perform all required maintenance and support for our cloud offering. Revenue is recognized on a ratable basis over the contract term beginning on the date the service is made available to the customer. Our cloud-based subscription contracts generally have a term of one to three years in length. We bill customers and collect payment for subscriptions to our platform in advance, and they are non-cancellable.

### **Term License Subscriptions**

Our term license subscription revenue is derived from customers with on-premises installations of our platform. The majority of our contracts are one year in length. Although term license subscriptions are sold with maintenance and support, the software is fully functional at the beginning of the subscription and is considered a distinct performance obligation. If a cloud agreement includes the right for the customer to take possession of the license, the revenue is treated as a term license. Revenue from term license subscriptions is recognized when control of the software license has transferred to the customer, which is the later of delivery or commencement of the contract term.

### **Maintenance and Support**

Maintenance and support subscriptions include both technical support and when-and-if-available software upgrades, which are treated as a single performance obligation as they are considered a series of distinct services that are substantially the same and have the same duration and measure of progress. Revenue from maintenance and support is recognized ratably over the contract period, which is the period over which the customer has continuous access to maintenance and support.

### *Professional Services Revenue*

Our professional services revenue is comprised of fees for consulting services, including application development and deployment assistance as well as training services related to our platform.

### **Consulting Services**

We sell consulting services to assist customers in planning and executing the deployment of our software. Customers are not required to use consulting services to fully benefit from the software. Consulting services are regularly sold on a standalone basis and either (1) under a fixed-fee arrangement or (2) on a time and materials basis. Consulting service contracts are considered separate performance obligations because they do not integrate with each other or with other products and services to deliver a combined output to the customer, do not modify or customize (or are not modified or customized by) each other or other products and services, and do not affect the customer's ability to use the other consulting offerings or other products and services. Revenue under consulting contracts is recognized over time as services are delivered. For time and materials-based consulting contracts, we have elected the practical expedient of recognizing revenue upon invoicing since the invoiced amount corresponds directly to the value of our service to date.

### **Training Services**

We sell various training services to our customers. Training services are sold in the form of prepaid training credits that are redeemed based on a fixed rate per course. Training revenue is recognized when the associated training services are delivered.

### *Significant Judgments and Estimates*

### **Determining the Transaction Price**

The transaction price is the total amount of consideration we expect to receive in exchange for the service offerings in a contract and may include both fixed and variable components. Variable consideration is included in the transaction price to the

extent it is probable a significant reversal will not occur. The amount of variable consideration excluded from the transaction price for the years ended December 31, 2022, 2021, and 2020 was insignificant. Our estimates of variable consideration are also subject to subsequent true-up adjustments and may result in changes to transaction prices; however, such true-up adjustments are not expected to be material.

#### **Allocating the Transaction Price Based on Standalone Selling Prices (“SSP”)**

We allocate the transaction price to each performance obligation in a contract based on its relative SSP. The SSP is the observable price at which we sell the product or service separately. In the absence of observable pricing, we estimate SSP using the residual approach. We establish SSP as follows:

1. Cloud subscriptions - Given the highly variable selling price of our cloud subscriptions, we establish the SSP of our cloud subscriptions using a residual approach after first determining the SSP of consulting and training services. We have concluded the residual approach to estimating SSP of our cloud subscriptions is an appropriate allocation of the transaction price.
2. Term license subscriptions - Given the highly variable selling price of our term license subscriptions, we have established SSP of term license subscriptions using a residual approach after first determining the SSP of maintenance and support. Maintenance and support is sold on a standalone basis in conjunction with renewals of our legacy perpetual software licenses and within a narrow range of the net license fee. Because an economic relationship exists between the license and maintenance and support, we have concluded the residual approach to estimating SSP of term license subscriptions is an appropriate allocation of the transaction price.
3. Maintenance and support - We establish the SSP of maintenance and support as a percentage of the stated net subscription fee based on observable pricing of maintenance and support renewals from our legacy perpetual software licenses.
4. Consulting and training services - The SSP of consulting and training services is established based on the observable pricing of standalone sales within each geographic region where the services are sold.

#### *Contract Balances*

Timing may differ between the satisfaction of performance obligations and the invoicing and collection of amounts related to our contracts with customers. Contract assets primarily relate to unbilled amounts for contracts with customers for which the amount of revenue recognized exceeds the amount billed to the customer. Contract assets are transferred to accounts receivable when the right to invoice becomes unconditional. As of December 31, 2022 and 2021, contract assets of \$14.3 million and \$14.0 million, respectively, are included in the Prepaid expenses and other current assets and Other assets line items in our consolidated balance sheets.

Contract liabilities consist of deferred revenue and include payments received in advance of the satisfaction of performance obligations. Deferred revenue is then recognized as the revenue recognition criteria are met. Deferred revenue that will be recognized during the succeeding 12-month period is recorded as current, and the remaining deferred revenue is recorded as non-current. For the year ended December 31, 2022, we recognized \$147.0 million of revenue that was included in the deferred revenue balance as of December 31, 2021.

#### *Transaction Price Allocated to the Remaining Performance Obligations*

As of December 31, 2022, we had an aggregate transaction price of \$376.5 million allocated to unsatisfied performance obligations. We expect to recognize \$243.2 million of this balance as revenue over the next 12 months with the remaining amount recognized thereafter.

#### **4. Leases**

As of December 31, 2022, our lease portfolio consists entirely of operating leases, all of which are for corporate offices. Our operating leases have remaining lease terms with various expiration dates through 2031, and some leases include options to extend the term for up to an additional 10 years.

***Right-of-Use (“ROU”) Assets and Lease Liabilities***

At the inception of an arrangement, we determine whether the arrangement is or contains a lease based on the unique facts and circumstances present and the classification of the lease. Operating leases with a term greater than one year are recognized on the consolidated balance sheet as ROU assets, lease liabilities, and, if applicable, long-term lease liabilities. ROU assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make lease payments arising from the lease. We have elected not to recognize on our consolidated balance sheets leases with a term of one year or less.

Lease liabilities and their corresponding ROU assets are recorded based on the present value of lease payments over the expected lease term. The implicit rates within most of our leases are generally not determinable; therefore, we estimate our incremental borrowing rate to determine the present value of lease payments. The determination of our incremental borrowing rate requires judgment and is estimated for each lease based on the rate we would have to pay for a collateralized loan with the same terms as the lease. We consider various factors, including our level of collateralization, estimated credit rating, and the currency in which the lease is denominated. Operating lease ROU assets also include any lease prepayments, offset by lease incentives. Certain of our leases include options to extend or terminate the lease. An option to extend the lease is considered in connection with determining the ROU asset and lease liability when it is reasonably certain we will exercise that option..

***Lease Costs***

Expense for operating leases is recognized on a straight-line basis over the lease term as an operating expense. We have lease agreements which require payments for lease and non-lease components (i.e., common area maintenance) that are accounted for as a single lease component. Variable lease payment amounts that cannot be determined at the commencement of the lease, such as maintenance costs based on future obligations, are not included in ROU assets or lease liabilities but rather are expensed as incurred and recorded as variable lease expense.

The following table sets forth the components of lease expense for the years ended December 31, 2022, 2021 and 2020 (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Operating lease cost	\$ 6,950	\$ 6,619	\$ 6,649
Finance lease costs:			
Amortization of right-of-use assets	—	—	1,242
Interest on lease liabilities	—	—	150
Short-term lease cost	583	149	565
Variable lease cost	3,817	2,713	281
<b>Total</b>	<b>\$ 11,350</b>	<b>\$ 9,481</b>	<b>\$ 8,887</b>

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**Supplemental Lease Information**

Supplemental balance sheet information related to operating leases as of December 31, 2022 and December 31, 2021 is as follows (in thousands, except for lease term and discount rate):

	<b>As of December 31,</b>	
	<b>2022</b>	<b>2021</b>
Right-of-use assets for operating leases	\$ 37,248	\$ 27,897
Operating lease liabilities, current	\$ 8,681	\$ 8,110
Operating lease liabilities, net of current portion	57,225	48,784
<b>Total operating lease liabilities</b>	<b>\$ 65,906</b>	<b>\$ 56,894</b>
Weighted average remaining lease term (in years)	8.4	9.5
Weighted average discount rate	9.4 %	9.5 %

Supplemental cash flow and expense information related to operating leases for the years ended December 31, 2022 and 2021 is as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2022</b>	<b>2021</b>	<b>2020</b>
Operating cash outflows for operating leases	\$ 7,073	\$ 7,732	\$ 3,407
Operating cash outflows for finance leases	—	—	150
Financing cash outflows for finance leases	—	—	3,822
Amortization of operating lease ROU assets	1,495	1,361	1,554
Interest expense on operating lease liabilities	5,406	5,268	1,853

A summary of our future minimum lease commitments under non-cancellable leases as of December 31, 2022 is as follows (in thousands):

	<b>Operating Leases</b>
2023	\$ 9,076
2024	11,122
2025	11,409
2026	11,666
2027	11,717
Thereafter	42,513
<b>Total lease payments</b>	<b>97,503</b>
Less: imputed interest	(31,597)
<b>Total</b>	<b>\$ 65,906</b>

**5. Business Combinations**

In August 2021, we acquired 100% of the outstanding common stock of Lana Labs, a developer of process mining software, for approximately \$30.7 million, net of cash acquired and debt. The acquisition was made due to the attractive nature

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of the product offerings of Lana Labs and in furtherance of our objective to enhance our automation platform. The transaction was financed through available cash on hand.

The allocation of the purchase price was based upon the fair value of the assets acquired and liabilities assumed. The purchase price allocated to goodwill and intangible assets is not deductible for tax purposes. The following table summarizes the fair value of the assets acquired and liabilities assumed in connection with the acquisition (in thousands):

Cash acquired	\$	256
Other current assets		106
Property and equipment		59
Developed technology		5,974
Customer relationships		750
Goodwill		24,521
Other non-current assets		27
Total assets acquired		<u>31,693</u>
Current liabilities		638
Non-current liabilities		38
Total liabilities assumed		<u>676</u>
Net assets acquired	\$	<u>31,017</u>

During the third quarter of 2022, we finalized the fair value of the assets acquired and liabilities assumed in the acquisition, and the amounts presented above are now final. Measurement period adjustments recorded in 2021 included a \$0.8 million adjustment to developed technology and goodwill related to an update to the discount rate utilized in our valuation of intangible assets, a \$0.3 million increase in deferred revenue stemming from our early adoption of new accounting guidance relating to deferred revenue recognized pursuant to a business combination, a \$0.1 million deferred tax adjustment, and an immaterial adjustment to working capital.

## 6. Goodwill and Intangible Assets

The following table summarizes goodwill balances as of December 31, 2022 and 2021 (in thousands):

	<b>Carrying Amount</b>
Balance as of December 31, 2020	\$ 4,862
Goodwill acquired, net of measurement period adjustments	24,521
Foreign currency translation adjustments	(1,588)
Balance as of December 31, 2021	\$ 27,795
Goodwill acquired	—
Foreign currency translation adjustments	(1,446)
Balance as of December 31, 2022	<u>\$ 26,349</u>

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Intangible assets, net consisted of the following as of December 31, 2022 and 2021 (in thousands):

	As of December 31,	
	2022	2021
Developed technology	\$ 6,893	\$ 7,271
Customer relationships - Non-Robotic Process Automation ("RPA")	827	872
Customer relationships - RPA	246	261
Intangible assets, gross	7,966	8,404
Less: Accumulated amortization	(2,715)	(1,260)
Intangible assets, net	<u>\$ 5,251</u>	<u>\$ 7,144</u>

Intangible amortization expense was \$1.5 million, \$0.8 million, and \$0.4 million for the years ended December 31, 2022, 2021, and 2020, respectively. As of December 31, 2022, the weighted average remaining amortization periods for developed technology, non-RPA customer relationships, and RPA customer relationships were approximately 3.4 years, 8.7 years, and 7.0 years, respectively.

The projected annual amortization expense related to amortizable intangible assets as of December 31, 2022 is as follows (in thousands):

Year Ended December 31,	
2023	\$ 1,471
2024	1,471
2025	1,170
2026	753
2027	92
Thereafter	294
Total projected amortization expense	<u>\$ 5,251</u>

**7. Property and Equipment, net**

Property and equipment, net consisted of the following as of December 31, 2022 and 2021 (in thousands):

	As of December 31,	
	2022	2021
Leasehold improvements	\$ 45,959	\$ 41,005
Office furniture and fixtures	3,476	2,536
Computer hardware	9,689	6,001
Computer software	1,353	1,353
Equipment	242	124
Property and equipment, gross	60,719	51,019
Less: Accumulated depreciation	(18,864)	(14,106)
Property and equipment, net	<u>\$ 41,855</u>	<u>\$ 36,913</u>

Depreciation expense totaled \$5.8 million, \$4.9 million, and \$5.4 million for the years ended December 31, 2022, 2021, and 2020, respectively. During the year ended December 31, 2022, we retired and disposed of fully depreciated laptops and computer hardware with a gross asset value of approximately \$1.0 million. Disposals during the year ended December 31, 2021 were not significant.



## 8. Accrued Expenses

Accrued expenses consisted of the following as of December 31, 2022 and 2021 (in thousands):

	As of December 31,	
	2022	2021
Hosting costs	\$ 2,802	\$ 1,995
Contract labor costs	1,465	891
Marketing and tradeshow expenses	1,000	1,167
Audit and tax expenses	911	439
Taxes payable	827	550
Legal costs	475	5,511
Reimbursable employee expenses	1,004	870
Third party license fees	1,223	1,066
Capital expenditures	744	379
Other accrued expenses	1,776	2,615
<b>Total</b>	<b>\$ 12,227</b>	<b>\$ 15,483</b>

## 9. Debt

### *Senior Secured Credit Facilities Credit Agreement*

On November 3, 2022, we entered into a new Senior Secured Credit Facilities Credit Agreement (the “Credit Agreement”) which provides for a five-year term loan facility in an aggregate principal amount of \$100.0 million and, in addition, up to \$50.0 million for a revolving credit facility, including a letter of credit sub-facility in the aggregate availability amount of \$15.0 million and a swingline sub-facility in the aggregate availability amount of \$10.0 million (as a sublimit of the revolving loan facility). On December 13, 2022, we executed the first amendment to the credit agreement which increased the aggregate principal amount of the term loan facility by \$20.0 million and the limit of the revolving credit facility by \$10.0 million. The Credit Agreement matures on November 3, 2027. We will use the proceeds from the \$120.0 million term loan to fund the continued growth of our business and support our working capital requirements.

Under the agreement, we may elect whether amounts drawn bear interest on the outstanding principal amount at a rate per annum equal to either (a) the higher of the Prime rate or the Federal Funds Effective (“Base Rate”) rate plus 0.50% or (b) the forward-looking term rate based on the secured overnight financing rate (“Term SOFR”). An additional interest rate margin is added to the elected interest rates. During the first three years of the Credit Agreement, the additional interest rate margin ranges from 1.5% to 2.5% in the case of Base Rate advances or from 2.5% to 3.5% in the case of Term SOFR advances, depending on our debt to recurring revenue leverage ratio (as defined in the Credit Agreement). During the final two years of the Credit Agreement, the interest rate margin ranges from 0.5% to 2.5% in the case of Base Rate advances and from 1.5% to 3.5% in the case of Term SOFR advances, depending on our debt to consolidated adjusted EBITDA leverage ratio (as defined in the Credit Agreement).

In addition, the Credit Agreement contains other customary representations, warranties and covenants, including covenants by us limiting additional indebtedness, guaranties, liens, fundamental changes, mergers and consolidations, dispositions of assets, investments, paying dividends on capital stock or redeeming, repurchasing or retiring capital stock, or prepaying certain junior indebtedness and preferred stock, certain corporate changes, and transactions with affiliates. The Credit Agreement also provides for customary events of default, including but not limited to non-payment, breaches or defaults in the performance of covenants, insolvency, bankruptcy, and the occurrence of a material adverse effect on us.

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The following table summarizes outstanding long-term debt balances (in thousands):

	As of December 31,	
	2022	2021
Secured term loan facility	\$ 119,375	\$ —
Less: Debt issuance costs	(1,256)	—
Total long-term debt, net of debt issuance costs	<u>\$ 118,119</u>	<u>\$ —</u>
Long-term debt, current	\$ 2,740	\$ —
Long-term debt, net of current portion	115,379	—
Total long-term debt	<u>\$ 118,119</u>	<u>\$ —</u>

The following table summarizes the annual maturities of the principal amount of total debt due (in thousands):

**Repayment schedule of principal long-term debt as of December 31, 2022**

2023	\$ 3,000
2024	3,750
2025	6,000
2026	6,000
2027	100,625
Total	<u>\$ 119,375</u>

We were in compliance with all covenants as of December 31, 2022. As of December 31, 2022, we had no outstanding borrowings under the revolving credit facility, and we had outstanding letters of credit totaling \$12.0 million in connection with securing our leased office space.

**10. Income Taxes**

For the years ended December 31, 2022, 2021, and 2020, our loss before income taxes was comprised of the following (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Domestic	\$ (102,434)	\$ (48,743)	\$ (25,463)
Foreign	(47,794)	(39,120)	(7,131)
Total	<u>\$ (150,228)</u>	<u>\$ (87,863)</u>	<u>\$ (32,594)</u>

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For the years ended December 31, 2022, 2021, and 2020, our income tax expense (benefit) was comprised of the following (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Current:			
Federal	\$ 72	\$ 15	\$ 11
State	119	79	79
Foreign	1,409	1,156	977
Total current expense	1,600	1,250	1,067
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	(908)	(472)	(184)
Total deferred benefit	(908)	(472)	(184)
Total income tax expense	\$ 692	\$ 778	\$ 883

For the years ended December 31, 2022, 2021, and 2020, the provision for income taxes differs from the amount computed by applying the federal statutory income tax rates to our loss before the provision (benefit) for income taxes as follows:

	Year Ended December 31,		
	2022	2021	2020
U.S. federal statutory tax rate	21.0 %	21.0 %	21.0 %
State tax expense	4.1	4.7	18.2
Foreign rate differential	(3.3)	(4.1)	(3.6)
Nondeductible expenses	(0.3)	(0.5)	(0.6)
Foreign tax expense	0.3	(0.2)	—
Equity compensation	1.0	7.0	46.2
Tax credits	4.7	5.0	12.0
Unrecognized tax benefits	(0.9)	(0.9)	(2.2)
Change in tax rate	0.3	(1.2)	—
Other	(0.5)	(0.1)	(1.1)
Deferred adjustments	(0.8)	0.9	(1.7)
Change in valuation allowance	(26.1)	(32.5)	(90.9)
Total	(0.5)%	(0.9)%	(2.7)%

The effective tax rate of (0.5)% in 2022 includes \$39.2 million of tax expense attributable to the change in the valuation allowance in the United States, Switzerland, and Germany (Lana Labs GmbH), partially offset by \$8.6 million of favorable excess tax benefits for equity compensation and research credits.

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Deferred tax assets and liabilities reflect the net tax effects of temporary differences between the carrying amount of the assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. As of December 31, 2022 and 2021, significant components of our deferred tax assets and liabilities were as follows (in thousands):

	As of December 31,	
	2022	2021
<b>Deferred tax assets:</b>		
Net operating losses	\$ 85,442	\$ 81,499
Tax credits	21,215	15,510
Deferred revenue	416	466
Equity compensation	5,314	4,917
Lease liabilities	17,732	15,089
Accrued compensation	4,510	3,390
Bad debt	656	373
Other accrued expense	16	1,452
Capitalized research and development costs	29,991	—
Other	431	301
Gross deferred tax assets	165,723	122,997
Less: Valuation allowance	(132,581)	(94,399)
Total deferred tax assets	33,142	28,598
<b>Deferred tax liabilities:</b>		
Prepaid expenses	(15,309)	(12,576)
Right-of-use assets	(10,056)	(7,361)
Unbilled receivables	—	(1,248)
Depreciation	(4,275)	(3,892)
Intangible assets	(1,540)	(2,102)
Other	(123)	(603)
Total deferred tax liabilities	(31,303)	(27,782)
Net deferred tax assets	\$ 1,839	\$ 816

As of December 31, 2022 and 2021, we had \$237.7 million and \$239.9 million of gross net operating loss (“NOL”) carryforwards for U.S. federal tax purposes, respectively. U.S. federal NOL carryforwards in the amount of \$16.9 million, gross, generated prior to 2018 will expire, if unused, in 2037. Under the Tax Cuts and Jobs Act of 2017 (the “TCJA”), as modified by the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), federal NOL carryforwards generated in tax years beginning after December 31, 2017 may be carried forward indefinitely. As of December 31, 2022, we had \$220.8 million of gross NOL carryforwards generated after 2017 for U.S. federal tax purposes, which may be used to offset 80% of our taxable income annually.

Section 382 of the Internal Revenue Code limits the utilization of NOL carryforwards when ownership changes occur, as defined by that section. A number of states have similar state laws that limit utilization of state NOL carryforwards when ownership changes occur. We have performed an analysis of our Section 382 ownership changes and have determined all U.S. federal and state NOL carryforwards are available for use as of December 31, 2022.

Beginning in 2022, the TCJA eliminated the option to deduct research and development expenditures immediately in the year incurred and requires companies to amortize such expenditures over five or fifteen years for tax purposes, depending on whether the activities were incurred in the U.S. or outside of the U.S. This change resulted in an increase to gross deferred tax assets of approximately \$30.0 million in 2022. Due to the full valuation allowance recorded against our U.S. deferred tax assets, there was no impact to net deferred tax assets. Additionally, there was no cash tax impact for 2022 due to our ability to use NOL carryforwards to fully offset taxable income generated by the changes to research and development expenditures.

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As of December 31, 2022 and 2021, we had \$19.3 million and \$13.7 million, respectively, of U.S. federal tax credit carryforwards which will expire, if unused, between 2031 and 2042.

As of December 31, 2022 and 2021, we had U.S. gross state NOL carryforwards of \$256.3 million and \$249.8 million, respectively. We had tax effected state NOL carryforwards of \$14.8 million and \$14.1 million as of December 31, 2022 and 2021, respectively. The rules regarding carryforwards vary from state to state, and the ability to utilize NOLs varies based on timing and amount. The majority of state NOL carryforwards generated prior to 2018 will expire, if unused, in 2037. Due to the TCJA, certain state NOL carryforwards generated after 2017 have an indefinite carryforward period.

As of December 31, 2022 and 2021, we had foreign gross NOL carryforwards of \$163.4 million and \$126.6 million, respectively, primarily attributable to our subsidiary in Switzerland. In 2022, \$8.1 million of Swiss NOLs expired related to the 2015 tax year. An additional piece of those NOL carryforwards will expire each year, if unused, between 2023 and 2029.

The net change in the total valuation allowance during the year ended December 31, 2022 was \$38.2 million, primarily driven by the valuation allowance recorded against the United States and Switzerland deferred tax assets. The \$1.1 million valuation allowance against the Germany (Lana Labs GmbH) deferred tax assets was released in 2022 as a result of post-integration tax planning and the merger of German subsidiaries.

As of December 31, 2022, we continued to maintain a full valuation allowance against U.S. deferred tax assets based on our cumulative operating results as of December 31, 2022, three-year cumulative loss, and an assessment of our expected future results of operations. We have evaluated all evidence, both positive and negative, in assessing the likelihood of realizability, and we determined the negative evidence outweighed the positive evidence.

As of December 31, 2022, we have a valuation allowance of \$18.7 million against foreign deferred tax assets at our subsidiary in Switzerland. Based on our cumulative operating results as of December 31, 2022 and assessment of our expected future results of operations, we determined it was not more likely than not we would be able to realize the deferred tax assets prior to expiration.

We plan to distribute previously undistributed earnings of our foreign subsidiaries back to the United States in future years. Upon repatriation of those earnings, if any, we may be subject to taxes, including withholding taxes, net of any applicable foreign tax credits. Determination of the amount of unrecognized deferred U.S. income tax liability is not practicable.

As of December 31, 2022 and 2021, we had unrecognized tax benefits of \$4.5 million and \$3.1 million, respectively, none of which would affect our effective tax rate if recognized due to the valuation allowance. The following table summarizes the activity related to our unrecognized tax benefit from December 31, 2019 to December 31, 2022 (in thousands):

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Balance as of December 31, 2019	\$	1,575
Additions for tax positions in current years		702
Additions for tax positions in prior years		—
Reductions due to lapse in statutes of limitations		—
Settlements		—
Balance as of December 31, 2020		2,277
Additions for tax positions in current years		812
Additions for tax positions in prior years		—
Reductions due to lapse in statutes of limitations		—
Settlements		—
Balance as of December 31, 2021		3,089
Additions for tax positions in current years		1,399
Additions for tax positions in prior years		—
Reductions due to lapse in statutes of limitations		—
Settlements		—
Balance as of December 31, 2022	\$	4,488

We recognize interest and penalties related to uncertain tax positions in income tax expense. During the years ended December 31, 2022, 2021, and 2020, we recognized nominal amounts in interest. The cumulative balance of interest and penalties as of December 31, 2022 and 2021 were not meaningful. We anticipate total unrecognized tax benefits will not decrease over the next year.

We file income tax returns in the U.S. federal jurisdiction and in various state and foreign jurisdictions. Due to the NOL carryforward, tax years 2016 through 2022 remain open to examination by the major taxing jurisdictions to which we are subject. There are no open examinations that would have a meaningful impact to our consolidated financial statements.

## **11. Stock-Based Compensation**

### *Equity Incentive Plans*

In May 2017, our Board of Directors adopted, and our stockholders approved, the 2017 Equity Incentive Plan (the “2017 Plan”), which became effective as of the date of the final prospectus for our initial public offering. The 2017 Plan provides for the grant of incentive stock options to employees and for the grant of nonstatutory stock options, restricted stock awards, restricted stock units (“RSUs”), stock appreciation rights, performance-based stock awards, and other forms of equity compensation to employees, including officers, non-employee directors, and consultants. We initially reserved 6,421,442 shares of Class A common stock for issuance under the 2017 Plan, which included 421,442 shares that remained available for issuance under our 2007 Stock Option Plan (the “2007 Plan”) at the time the 2017 Plan became effective. The number of shares reserved under the 2017 Plan increases for any shares subject to outstanding awards originally granted under the 2007 Plan that expire or are forfeited prior to exercise. As a result of the adoption of the 2017 Plan, no further grants may be made under the 2007 Plan. As of December 31, 2022, there were 7,196,149 shares of Class A common stock reserved for issuance under the 2017 Plan, of which 2,839,475 were available to be issued.

### *Stock Options*

We estimate the fair value of stock options containing only a service condition using the Black-Scholes option pricing model, which requires the use of subjective assumptions, including the expected term of the option, the current price of the underlying stock, the expected stock price volatility, expected dividend yield, and the risk-free interest rate for the expected term of the option. The expected term represents the period of time the stock options are expected to be outstanding. Due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to derive an estimate, we use the simplified method to estimate the expected term for our stock options. Under the simplified method, the expected term of an option is presumed to be the mid-point between the vesting date and the end of the contractual term. Expected volatility is based on the

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historical volatility of our publicly traded stock over the estimated expected term of the stock options. We assume zero dividend yield because we have historically not paid dividends and do not anticipate paying dividends in the near future.

In June 2022, our Board of Directors granted a stock option to purchase 700,000 shares of our Class A common stock to our Chief Executive Officer (the “2022 CEO Grant”) under the 2017 Plan with an exercise price of \$50.63 per share. The 2022 CEO Grant is eligible to vest based on the achievement of various stock price appreciation targets of our Class A common stock. Specifically, the 2022 CEO Grant vests in four installments of 25% each if the average closing price per share for a 365 day calendar period equals each of \$175, \$200, \$225, and \$250, respectively (the “Vesting Price Threshold”), prior to June 7, 2030. The option also vests if the Company engages in a Corporate Transaction, as defined in the Plan, in which the Company’s Class A common stock is valued at or above the Vesting Price Threshold. The fair value of the 2022 CEO Grant was determined using a Monte Carlo simulation. The fair value of the award at the grant date was \$18.8 million and is being amortized over derived service periods ranging from 3.4 years to 4.1 years.

The only stock option awarded during the years ended December 31, 2022, 2021, and 2020 was the 2022 CEO Grant. The following table summarizes the assumptions used to estimate the fair value of the 2022 CEO stock option grant:

	Year Ended December 31,		
	2022	2021	2020
Risk-free interest rate	3.01 %	*	*
Expected term (in years)	**	*	*
Expected volatility	70 %	*	*
Expected dividend yield	— %	*	*

\* Not applicable because no stock options were granted during the period.

\*\* Each Vesting Price Threshold for the 2022 CEO grant has a unique expected term ranging from 3.4 years to 4.1 years.

The following table summarizes stock option activity for the years ended December 31, 2022, 2021, and 2020:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2019	4,458,611	\$ 12.30	5.8	\$ 115,501
Granted	—	—		
Exercised	(1,001,411)	6.39		81,181
Expired	(1,380)	11.82		
Forfeited	(56,580)	11.33		
Outstanding at December 31, 2020	3,399,240	14.06	4.9	503,174
Granted	—	—		
Exercised	(423,824)	6.55		43,525
Expired	(4,100)	10.54		
Forfeited	(17,960)	11.78		
Outstanding at December 31, 2021	2,953,356	15.16	4.0	147,812
Granted	700,000	50.63		
Exercised	(937,217)	27.14		32,858
Expired	(7,900)	4.06		
Forfeited	(10,280)	12.28		
Outstanding at December 31, 2022	2,697,959	\$ 20.25	5.1	\$ 45,867
Exercisable at December 31, 2022	1,997,959	\$ 9.60	3.6	\$ 45,867

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The total fair value of stock options that vested during the years ended December 31, 2022, 2021, and 2020 was \$0.9 million, \$10.8 million, and \$2.8 million, respectively. As of December 31, 2022, the total compensation cost related to unvested stock options not yet recognized, which relates exclusively to the 2022 CEO Grant, was \$16.0 million. This amount will be recognized over a weighted average period of 3.19 years.

***Restricted Stock Units***

The following table summarizes RSU activity for the years ended December 31, 2022, 2021, and 2020:

	Number of Shares	Weighted Average Grant Date Fair Value
Non-vested and outstanding at December 31, 2019	1,022,835	\$ 31.39
Granted	589,692	60.47
Vested	(270,609)	31.29
Forfeited	(176,915)	32.01
Non-vested and outstanding at December 31, 2020	1,165,003	46.04
Granted	488,462	108.98
Vested	(354,130)	43.39
Forfeited	(89,806)	62.72
Non-vested and outstanding at December 31, 2021	1,209,529	70.99
Granted	606,203	52.63
Vested	(403,648)	58.63
Forfeited	(221,364)	70.30
Non-vested and outstanding at December 31, 2022	1,190,720	\$ 65.97

As of December 31, 2022, total unrecognized compensation cost related to unvested RSUs was approximately \$58.3 million, which will be recognized over a weighted average period of 1.6 years.

The following table summarizes the components of our stock-based compensation expense by instrument type for the years ended December 31, 2022, 2021, and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
RSUs	\$ 35,290	\$ 19,382	\$ 10,745
Stock options	2,790	3,839	4,164
Common stock awards to Board of Directors	750	623	370
Total stock-based compensation expense	\$ 38,830	\$ 23,844	\$ 15,279



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Stock-based compensation expense for RSUs, stock options, and issuances of common stock to the Board of Directors is included in the following line items in the accompanying consolidated statements of operations for the years ended December 31, 2022, 2021, and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Cost of revenue			
Subscriptions	\$ 996	\$ 1,199	\$ 943
Professional services	5,309	3,131	1,477
Operating expenses			
Sales and marketing	9,152	5,426	2,821
Research and development	12,523	5,224	2,718
General and administrative	10,850	8,864	7,320
Total stock-based compensation expense	<u>\$ 38,830</u>	<u>\$ 23,844</u>	<u>\$ 15,279</u>

## 12. Stockholders' Equity

As of December 31, 2022, we had authorized 500,000,000 shares of Class A common stock and 100,000,000 shares of Class B common stock, each with a par value of \$0.0001 per share, of which 41,320,091 shares of Class A common stock and 31,497,796 shares of Class B common stock were issued and outstanding. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion rights. The holders of Class A common stock are entitled to one vote per share, and the holders of Class B common stock are entitled to ten votes per share on all matters subject to stockholder vote. The holders of Class B common stock also have approval rights for certain corporate actions. Each share of Class B common stock may be converted into one share of Class A common stock at the option of its holder and will be automatically converted upon transfer thereof, subject to certain exceptions. In addition, upon the date on which the outstanding shares of Class B common stock represent less than 10% of the aggregate voting power of our capital stock, all outstanding shares of Class B common stock shall convert automatically into Class A common stock.

## 13. Basic and Diluted Loss per Common Share

The following table sets forth the computation of basic and diluted net loss per share for the years ended December 31, 2022, 2021, and 2020 (in thousands, except share and per share data):

	Year Ended December 31,		
	2022	2021	2020
Numerator:			
Net loss	\$ (150,920)	\$ (88,641)	\$ (33,477)
Denominator:			
Weighted average common shares outstanding, basic and diluted	72,455,175	71,036,490	69,050,565
Net loss per share, basic and diluted	<u>\$ (2.08)</u>	<u>\$ (1.25)</u>	<u>\$ (0.48)</u>

Due to net losses for the years ended December 31, 2022, 2021, and 2020, basic and diluted net loss per share were the same as the effect of potentially dilutive securities would have been antidilutive.

The following outstanding securities, prior to the use of the treasury stock method, have been excluded from the computation of diluted weighted-average shares outstanding for the respective periods below because they would have been antidilutive to earnings per share:

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	Year Ended December 31,		
	2022	2021	2020
Stock options	2,697,959	2,953,356	3,399,240
Non-vested restricted stock units	1,190,720	1,209,529	1,165,003

**14. Commitments and Contingencies**

***Minimum Purchase Commitments***

In July 2021, we executed a non-cancellable cloud hosting arrangement with Amazon Web Services (“AWS”) that contains provisions for minimum purchase commitments. Specifically, purchase commitments under the agreement total \$131.0 million over five years, including \$22.0 million in the first year, \$25.0 million in the second year, and \$28.0 million in each of the third, fourth, and fifth years. The timing of payments under the agreement may vary, and the total amount of payments may exceed the minimum depending on the volume of services utilized. Spending under this agreement for the year ended December 31, 2022 totaled \$33.1 million.

***Letters of Credit***

At December 31, 2022 and 2021, we had outstanding letters of credit totaling \$12.0 million and \$11.2 million, respectively, in connection with securing our leased office space. All letters of credit are secured by our current or historical borrowing arrangements as described in Note 9.

***Pegasystems Litigation***

On May 29, 2020, we filed a civil complaint against Pegasystems, Inc. (“Pegasystems”) and Youyong Zou, a Virginia resident, in the Circuit Court for Fairfax County, Virginia. *Appian Corp v. Pegasystems Inc. & Youyong Zou, No. 2020-07216 (Fairfax Cty. Ct.)*. On May 10, 2022, we announced the jury awarded us \$2.036 billion in damages for misappropriation of our trade secrets and \$1 in damages for violating the Virginia Computer Crimes Act. Pegasystems filed several post-trial motions seeking relief in the form of reducing the damages award or setting aside the jury’s verdict and either granting a new trial or entering judgment in Pegasystems’ favor. All of these motions were denied, and final judgment was entered by the Court on September 15, 2022. The final judgment reaffirmed the \$2.036 billion in damages and also ordered Pegasystems to pay Appian \$23.6 million in attorney’s fees associated with the case as well as statutory post-judgment interest on the judgment at an annual rate of 6%, or approximately \$122.0 million per year.

Defendant Youyong Zou has satisfied the judgment of \$5,000 (plus interest) against him in lieu of appealing that judgment. On September 15, 2022, Pegasystems filed a notice of appeal, and on February 6, 2023, Pegasystems filed its opening brief with the Court of Appeals of Virginia. Appian expects to file its responsive brief in March 2023, to which Pegasystems will file a reply brief. After submission of the reply brief, the timeline of the case is solely within the control of the Court of Appeals until it rules. Pegasystems is not required to pay us the judgment, attorney’s fees, or post-judgment interest until all appeals are exhausted. We cannot predict the outcome of any appeals or the time it will take to resolve them. Consistent with other judgments, there is no guarantee we will be able to collect all or any portion of the judgment. Consequently, we will not record the award in our consolidated financial statements until all contingencies are resolved and we collect on the judgment.

***Other Legal Matters***

From time to time, we are subject to legal, regulatory, and other proceedings and claims that arise in the ordinary course of business. Other than as disclosed elsewhere in this Annual Report, we are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition, or cash flows. We do not believe any material liability will be imposed as a result of any of the foregoing matters.

**15. Segment and Geographic Information**

The following table summarizes revenue by geography for the years ended December 31, 2022, 2021, and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Domestic	\$ 311,075	\$ 243,562	\$ 201,483
International	156,916	125,697	103,090
Total	\$ 467,991	\$ 369,259	\$ 304,573

With respect to geographic information, revenue is attributed to respective geographies based on the contracting address of the customer. There were no individual foreign countries from which more than 10% of our total revenue was attributable for the years ended December 31, 2022 and 2021. Revenue from customers attributed to the United Kingdom were 12.5% of our total revenue for the year ended December 31, 2020. Substantially all of our long-lived assets were held in the United States as of December 31, 2022 and 2021.

**16. Retirement Plans**

We have a defined contribution 401(k) retirement and savings plan (the “Plan”) to provide retirement benefits for all eligible employees. With limited exceptions, all employees over the age of 21 on the first day of the month immediately following the month of hiring are eligible to participate in the Plan. The Plan allows eligible employees to make salary-deferred contributions up to 75% of their pre-tax annual compensation, as defined in the Plan, as long as the total contributed does not exceed the annual maximum allowable amount under the Internal Revenue Code. The Company makes a semi-monthly matching contribution of 100% of the employee's contribution for that pay period, up to a maximum of 4% of the employee's eligible gross compensation for that pay period. Company contributions vest ratably based on years of service over a four year period, beginning with the completion of the first year of service. For the years ended December 31, 2022, 2021, and 2020, we incurred \$11.5 million, \$8.7 million, and \$6.8 million, respectively, in contribution expense related to employer matching contributions.

**17. Investments and Fair Value Measurements**

*Fair Value Measurements*

U.S. GAAP establishes a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires us to use observable inputs when available and to minimize the use of unobservable inputs when determining fair value. The three tiers are defined as follows:

- **Level 1.** Observable inputs based on unadjusted quoted prices in active markets for identical assets or liabilities;
- **Level 2.** Inputs, other than quoted prices in active markets, that are observable either directly or indirectly; and
- **Level 3.** Unobservable inputs for which there is little or no market data, and which require us to develop our own estimates and assumptions reflecting those that a market participant would use.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs. There were no instruments measured at fair value on a recurring basis using significant unobservable inputs during the years ended December 31, 2022 and 2021.

The valuation techniques that may be used to measure fair value are as follows:

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- **Market approach.** Uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities;
- **Income approach.** Uses valuation techniques to convert future amounts to a single present amount based on current market expectations about those future amounts; and
- **Cost approach.** Based on the amount that currently would be required to replace the service capacity of an asset (i.e., replacement cost).

The carrying amounts of our cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses approximate fair value as of December 31, 2022 and 2021 because of the relatively short duration of these instruments. Additionally, the carrying value of our debt associated with the term loan facility approximates fair value because the interest rates are variable and reset on a relatively short durations to the then market rates.

**Investments**

Our investment portfolio consists largely of debt investments classified as available-for-sale. Changes in the fair value of available-for-sale securities, excluding other-than-temporary impairments, are recorded in accumulated other comprehensive loss in our consolidated balance sheets. The components of our investments as of December 31, 2022 and 2021 are as follows (in thousands):

As of December 31, 2022						
Fair Value Measurement				Balance Sheet Classification		
	Fair Value Level	Cost Basis	Unrealized Gains (Losses)	Market Value	Cash and Cash Equivalents	Short-term Investments and Marketable Securities
Money market fund	Level 1	\$ 39,469	\$ —	\$ 39,469	\$ 39,469	\$ —
U.S. Treasury bonds	Level 1	9,396	(13)	9,383	—	9,383
Commercial paper	Level 2	26,704	—	26,704	—	26,704
Corporate bonds	Level 2	9,353	(12)	9,341	—	9,341
Agency bonds	Level 2	2,432	3	2,435	—	2,435
Total investments		<u>\$ 87,354</u>	<u>\$ (22)</u>	<u>\$ 87,332</u>	<u>\$ 39,469</u>	<u>\$ 47,863</u>

As of December 31, 2021, our investments consisted of the following (in thousands):

As of December 31, 2021							
Fair Value Measurement				Balance Sheet Classification			
	Fair Value Level	Cost Basis	Unrealized Gains (Losses)	Market Value	Cash and Cash Equivalents	Short-Term Investments and Marketable Securities	Long-Term Investments
Money market fund	Level 1	\$ 38,301	\$ —	\$ 38,301	\$ 38,301	\$ —	\$ —
U.S. Treasury bonds	Level 1	8,171	—	8,171	—	8,171	—
Commercial paper	Level 2	23,312	—	23,312	—	23,312	—
Corporate bonds	Level 2	20,107	(14)	20,093	—	8,049	12,044
Asset-backed securities	Level 2	15,655	(8)	15,647	—	15,647	—
Total investments		<u>\$ 105,546</u>	<u>\$ (22)</u>	<u>\$ 105,524</u>	<u>\$ 38,301</u>	<u>\$ 55,179</u>	<u>\$ 12,044</u>

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There were no Level 3 assets held at any point during the year ended December 31, 2022 and 2021. Additionally, there were no transfers between Levels 1 and 2 during the years ended December 31, 2022 and 2021. Interest income on our investments totaled \$0.9 million for the year ended December 31, 2022.

The amortized cost basis and fair value of debt securities at December 31, 2022 and 2021, by contractual maturity, are as follows (in thousands):

	<b>As of December 31, 2022</b>	
	<b>Cost Basis</b>	<b>Fair Value</b>
Due in one year or less	\$ 87,354	\$ 87,332
Due after one year through five years	—	—
Total investments	\$ 87,354	\$ 87,332

	<b>As of December 31, 2021</b>	
	<b>Cost Basis</b>	<b>Fair Value</b>
Due in one year or less	\$ 93,497	\$ 93,480
Due after one year through five years	12,049	12,044
Total investments	\$ 105,546	\$ 105,524

Actual maturities may differ from the contractual maturities in the table above because borrowers have the right to call or prepay certain obligations.

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

## **Item 9A. Controls and Procedures.**

### **Evaluation of Disclosure Controls and Procedures**

We maintain “disclosure controls and procedures,” as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act that are designed to ensure information required to be disclosed by a company in the reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure information required to be disclosed by a company in the reports it files or submits under the Exchange Act is accumulated and communicated to its management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2022. Based on the evaluation of our disclosure controls and procedures as of December 31, 2022, our Chief Executive Officer and Chief Financial Officer concluded, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

### **Management's Annual Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15(d)-15(f) of the Exchange Act. Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in Internal Control - Integrated Framework (2013). Based on this assessment, management concluded that, as of December 31, 2022, our internal control over financial reporting was effective.

The Annual Report on Form 10-K includes an attestation report of our independent registered public accounting firm regarding internal control over financial reporting, which appears in Part II, Item 8 of this Annual Report on Form 10-K.

### **Changes in Internal Control Over Financial Reporting**

There have been no material changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### **Inherent Limitations on Effectiveness of Controls**

Our management, including our Chief Executive Officer and Chief Financial Officer, believes our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance the objectives of the control system are met. Further, the design of a control system must reflect the fact there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**Item 9B. Other Information.**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.**

None.

### Part III

#### **Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by this item is incorporated by reference to our Proxy Statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

We have adopted a Code of Conduct, applicable to all of our employees, executive officers, and directors. The Code of Conduct is available on our website at [www.appian.com](http://www.appian.com). We expect any amendments to the Code of Conduct or any waivers of its requirement will be disclosed on our website ([www.appian.com](http://www.appian.com)) as required by applicable law or the listing standards of the Nasdaq Stock Market. The information contained on, or that can be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our website are intended to be inactive textual references only.

#### **Item 11. Executive Compensation.**

The information required by this item is incorporated by reference to our Proxy Statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the year ended December 31, 2022.

#### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

The information required by this item is incorporated by reference to our Proxy Statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the year ended December 31, 2022.

#### **Item 13. Certain Relationships and Related Transactions and Director Independence.**

The information required by this item is incorporated by reference to our Proxy Statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the year ended December 31, 2022.

#### **Item 14. Principal Accounting Fees and Services.**

The information required by this item is incorporated by reference to our Proxy Statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the year ended December 31, 2022.



## Part IV

### Item 15. Exhibits, Financial Statement Schedules.

#### (a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Consolidated Financial Statements and Report of Independent Registered Public Accounting Firm are shown in the Index to Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

(2) All financial statement schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

(3) Exhibits are incorporated herein by reference or are filed with this Annual Report on Form 10-K as indicated below.

#### (b) Exhibits

<u>Exhibit No.</u>	<u>Description</u>	<u>Reference</u>
3.1	Amended and Restated Certificate of Incorporation of Appian Corporation.	<a href="#">Previously filed as Exhibit 3.2 to Amendment No. 3 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on May 12, 2017, and incorporated herein by reference.</a>
3.2	Amended and Restated Bylaws of Appian Corporation.	<a href="#">Previously filed as Exhibit 3.4 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on May 10, 2017, and incorporated herein by reference.</a>
4.1	Form of Class A common stock certificate of Appian Corporation.	<a href="#">Previously filed as Exhibit 4.1 to Amendment No. 3 to the Registrant's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on May 12, 2017, and incorporated herein by reference.</a>
4.2	Description of Securities.	<a href="#">Previously filed as Exhibit 4.3 to the Company's Annual Report on 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 17, 2022, and incorporated herein by reference.</a>
10.1	2007 Stock Option Plan and Form of Option Agreement and Exercise Notice thereunder, as amended to date. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.1 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on April 27, 2017, and incorporated herein by reference.</a>
10.2	2017 Equity Incentive Plan and Forms of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.2 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on May 10, 2017, and incorporated herein by reference.</a>
10.3	2017 Equity Incentive Plan French Qualifying Sub-Plan, with Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement thereunder. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.14 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 23, 2018, and incorporated herein by reference.</a>
10.4	2017 Equity Incentive Plan CSOP Sub-Plan for UK Eligible Employees, with Forms of CSOP Stock Option Grant Notice and CSOP Option Agreement thereunder. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.15 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 23, 2018, and incorporated herein by reference.</a>
10.5	Forms of Restricted Stock Unit Grant Notices and Restricted Stock Unit Award Agreements under 2017 Equity Incentive Plan. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.12 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 23, 2018, and incorporated herein by reference.</a>
10.6	Forms of Restricted Stock Award Grant Notice and Restricted Stock Award Agreement under 2017 Equity Incentive Plan. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.13 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 23, 2018, and incorporated herein by reference.</a>

10.7	Appian Corporation Employee Stock Purchase Plan. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on August 5, 2021, and incorporated herein by reference.</a>
10.8	Agreement on the Sale and Transfer of Shares dated as of August 4, 2021, by and among Appian Europe Ltd., and each of the Sellers and Managers identified therein.	<a href="#">Previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on November 4, 2021, and incorporated herein by reference.</a>
10.9	Non-Employee Director Compensation Plan, as amended December 16, 2020. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.3 to the Company's Annual Report on 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 18, 2021, and incorporated herein by reference.</a>
10.10	Form of Indemnification Agreement by and between Appian Corporation and each of its directors and executive officers. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.4 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on May 10, 2017, and incorporated herein by reference.</a>
10.11	Senior Executive Cash Incentive Bonus Plan. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.11 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 23, 2018, and incorporated herein by reference.</a>
10.12	Employment Agreement, dated as of September 7, 2012, by and between Appian Corporation and Matthew Calkins. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on April 27, 2017, and incorporated herein by reference.</a>
10.13	Form of Amended and Restated Employment Agreement, dated as of April 27, 2017, by and between Appian Corporation and each of Mark Lynch and Chris Winters. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.7 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on April 27, 2017, and incorporated herein by reference.</a>
10.14	Employment Agreement, dated as of September 7, 2012, by and between Appian Corporation and Robert Kramer. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on May 7, 2020, and incorporated herein by reference.</a>
10.15	Employment Agreement, dated as of May 6, 2020, by and between Appian Corporation and Eric Cross. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on August 6, 2020, and incorporated herein by reference.</a>
10.16	Employment Agreement, dated as of March 31, 2020, by and between Appian Corporation and Pavel Zamudio-Ramirez. <sup>+</sup>	<a href="#">Filed herewith.</a>
10.17	Employment Agreement, dated as of April 2, 2022, by and between Appian Corporation and Mark Matheos. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on May 5, 2022, and incorporated herein by reference.</a>
10.18	Employment Agreement, dated as of October 14, 2022, by and between Appian Corporation and Christopher Jones. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on November 3, 2022, and incorporated herein by reference.</a>
10.19	Consultant Agreement, dated as of May 23, 2022, by and between Appian Corporation and William McCarthy. <sup>+</sup>	<a href="#">Previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on August 4, 2022, and incorporated herein by reference.</a>
10.20	Deed of Lease, dated April 17, 2018, between Appian Corporation and Tamares 7950 Owner LLC.	<a href="#">Previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-38098), filed with the Securities and Exchange Commission on April 23, 2018, and incorporated herein by reference.</a>
10.21	First Amendment to Deed of Lease, dated December 23, 2019, between Appian Corporation and Tamares 7950 Owner LLC.	<a href="#">Previously filed as Exhibit 10.15 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 20, 2020, and incorporated herein by reference.</a>
10.22	Second Amendment to Deed of Lease, effective as of January 1, 2020, between Appian Corporation and Tamares 7950 Owner LLC.	<a href="#">Previously filed as Exhibit 10.16 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 20, 2020, and incorporated herein by reference.</a>
10.23	Third Amendment to Deed of Lease, dated as of November 30, 2021, between Appian Corporation and Tamares 7950 Owner LLC.	<a href="#">Previously filed as Exhibit 10.21 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 17, 2022, and incorporated herein by reference.</a>

10.24	Agreement of Sublease, dated as of November 30, 2021, between Appian Corporation and Octagon, Inc.	<a href="#">Previously filed as Exhibit 10.22 to the Company's Annual Report on Form 10-K (File No. 001-38098), filed with the Securities and Exchange Commission on February 17, 2022, and incorporated herein by reference.</a>
10.25	Software Enterprise OEM License Agreement, dated as of June 15, 2016, by and between Appian Corporation and Kx Systems, Inc.†	<a href="#">Previously filed as Exhibit 10.11 to the Company's Registration Statement on Form S-1 (File No. 333-217510), filed with the Securities and Exchange Commission on April 27, 2017, and incorporated herein by reference.</a>
10.26	Addendum No. 1 to Software Enterprise OEM License Agreement, dated as of August 20, 2019, by and between Appian Corporation and Kx Systems, Inc.	<a href="#">Previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-38098) filed with the Securities and Exchange Commission on October 31, 2019, and incorporated herein by reference.</a>
10.27	Senior Secured Credit Facilities Credit Agreement, dated as of November 3, 2022, by and among Appian Corporation, Wells Fargo Bank, National Association, Comerica Bank, and Silicon Valley Bank.	<a href="#">Filed herewith.</a>
10.28	Joinder and First Amendment to Credit Agreement, dated as of December 13, 2022, by and among Appian Corporation, MUFG Bank, Ltd., Wells Fargo Bank, National Association, Comerica Bank, and Silicon Valley Bank.	<a href="#">Filed herewith.</a>
21.1	Subsidiaries of Appian Corporation.	<a href="#">Filed herewith.</a>
23.1	Consent of BDO USA, LLP, independent registered public accounting firm.	<a href="#">Filed herewith.</a>
24.1	Power of Attorney. Reference is made to the signature page hereto.	Filed herewith.
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	<a href="#">Filed herewith.</a>
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	<a href="#">Filed herewith.</a>
32.1	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*	<a href="#">Filed herewith.</a>
101.INS	XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.	Attached.
101.SCH	Inline XBRL Taxonomy Extension Schema Document	Attached.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	Attached.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	Attached.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	Attached.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	Attached.

104            Cover page interactive data file (formatted as Inline        Attached.  
                 XBRL and contained in Exhibit 101)

+ Indicates management contract or compensatory plan.

† Confidential treatment has been granted as to certain portions of this exhibit. These portions have been omitted and filed separately with the Securities and Exchange Commission.

\* This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

**Item 16. Form 10-K Summary.**

None.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

APPIAN CORPORATION

February 16, 2023

By:	<u>/s/ Matthew Calkins</u>	<u>/s/ Mark Matheos</u>
	Name: Matthew Calkins	Name: Mark Matheos
	Title: Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	Title: Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Matthew Calkins, Mark Matheos, and Christopher Winters, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, with full power of each to act alone, with full powers of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his, her or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Matthew Calkins</u> Matthew Calkins	Chief Executive Officer and Chairman of the Board <i>(Principal Executive Officer)</i>	February 16, 2023
<u>/s/ Mark Matheos</u> Mark Matheos	Chief Financial Officer <i>(Principal Financial Officer)</i>	February 16, 2023
<u>/s/ Robert Kramer</u> Robert Kramer	General Manager and Director	February 16, 2023
<u>/s/ A.G.W. "Jack" Biddle, III</u> A.G.W. "Jack" Biddle, III	Director	February 16, 2023
<u>/s/ Prashanth "PV" Boccassam</u> Prashanth "PV" Boccassam	Director	February 16, 2023
<u>/s/ Shirley Edwards</u> Shirley Edwards	Director	February 16, 2023
<u>/s/ Barbara "Bobbie" Kilberg</u> Barbara "Bobbie" Kilberg	Director	February 16, 2023
<u>/s/ Mark Lynch</u> Mark Lynch	Director	February 16, 2023
<u>/s/ William McCarthy</u> William McCarthy	Director	February 16, 2023
<u>/s/ Michael Mulligan</u> Michael Mulligan	Director	February 16, 2023

## APPIAN CORPORATION EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (“Agreement”) is made by and between APPIAN CORPORATION, a Delaware corporation, and its affiliates, successors, assigns and agents (“Appian” or “Company”), and Pavel Zamudio-Ramires (“you” and all similar references or “employee”) (collectively, the “parties”) in consideration of employee’s at-will employment relationship with Appian.

1. Employment. By accepting employment with Appian, you agree: (a) to devote your professional time, best efforts, attention and energies to Appian’s business and to refrain from outside employment or professional practice other than on account of or for the benefit of Appian (unless Appian consents in writing to such outside work); (b) to perform any and all work assigned to you by Appian faithfully and at such times and places as Appian designates; (c) to abide by all policies of Appian, both current and future; and (d) that you are not currently bound by any agreement that could prohibit or restrict you from being employed by Appian or from performing any duties under this Agreement.

2. Compensation and Benefits. Upon the commencement of your employment, Appian will pay you as provided in your offer letter (or as otherwise agreed in writing) payable in accordance with its normal payroll practices. From time to time, Appian may adjust your salary and other compensation at its discretion. During your employment, if you meet the minimum requirements of Appian’s plans, you will be eligible to participate in any employee compensation or benefit plans (including group health and 401(k)), incentive award programs, and to receive other fringe benefits that Appian may decide to make available to you. Appian may add, amend or discontinue any of its plans, programs, policies and procedures at any time for any or no reason with or without notice.

3. Restrictive Covenants. You further understand that Appian invests significant resources in the training and development of its employees. Therefore, in light of this, you agree to the following restrictions which are reasonably designed to protect Appian’s legitimate business interests without unreasonably restricting your ability to seek or obtain work upon voluntary or involuntary termination of your employment with Appian:

3.1 Covenant Not to Solicit or Perform Services for Customers or Prospective Customers. During your employment with Appian and for a period of eighteen

(18) months from the date your employment with Appian terminates, you agree not to contact, directly or indirectly, any Customer or Prospective Customer with whom you have had any written, electronic, verbal, or other contact on behalf of Appian, to sell, market, render or provide Similar Products or Services.

3.2 Restriction on the Solicitation of Appian’s Employees. During your employment with Appian, and for a period of twelve (12) months from the date your employment with Appian terminates, you agree not to, directly or indirectly, induce or solicit any Appian employee to terminate his or her employment or to seek or accept any employment with any other business entity.

3.3 Prohibition from Employing or Retaining Appian's Employees. During your employment with Appian and for a period of twelve (12) months from the date your employment with Appian terminates, you agree not to retain, hire or employ, directly or indirectly, any Appian employee who was employed by Appian on your termination date, or during the twelve (12) months preceding your termination date.

3.4 Definitions. For the purpose of this Section of the Agreement, the following definitions shall apply:

3.5.1 "Customer" means any entity for which Appian has performed Services during your employment with the Company.

3.5.2 "Specified Period" means one of the following quarterly two week periods: January 1 through January 15; April 1 through April 15; July 1 through July 15; and October 1 through October 15.

3.5.3 "Prospective Customer" means any entity that is not a Customer but with respect to whom, within twelve (12) months from your termination date, you conducted, prepared, submitted (or assisted or supervised such conduct) any proposal, client development work product or marketing efforts on behalf of Appian.

3.5.4 The term "Business Partner" means any entity that had a contractual agreement with Appian during your employment with the Company to engage in joint marketing and/or sales efforts, professional services (as a prime contractor or subcontractor), or as a re-seller of the Company's software.

3.5.5 The term "induce" means the act or process of enticing or persuading another person to take a certain course of action.

3.5.6 The term "solicit" means the act or process of obtaining by entreaty, persuasion, or application, formal or otherwise, a certain course of conduct.

3.5 Reasonableness of Restrictions. You agree that the restrictions set forth in this Section are reasonable, proper and no greater than necessary to protect the legitimate business interest of Appian and do not constitute an unlawful or unreasonable restraint upon your ability to earn a livelihood. In the event that any term set forth above including, but not limited to, the duration of the restraint or the geographic scope, is held unenforceable by court of competent jurisdiction, the parties agree that the unenforceable term may be reduced or modified by the court of competent jurisdiction.

3.6 Waiver. Any of the provisions listed in Sections 3.1 – 3.5 above may be waived in advance only with the express written consent of the CEO of Appian Corporation.

4. Employee Representations. You represent and warrant that you have the legal ability to perform your duties for Appian and that your employment does not violate the terms of any agreement, whether written or otherwise, including but not limited to any non- compete agreement, that would limit or impair your ability to perform your duties. You further represent



and warrant that you will not use any confidential or proprietary information from a prior employer, or any other third party.

5. Nondisclosure of Confidential Information. You acknowledge that all information related to the business of Appian that is not in the public domain, nor available from sources other than Appian is considered Confidential. For the purpose of this Agreement, Confidential Information also includes Appian's Trade Secrets and/or Proprietary Information and Confidential Information of third parties provided to Appian under terms of a confidentiality or nondisclosure agreement.

For the purpose of this Agreement, the definition of a "Trade Secret" shall be congruent with the Virginia Uniform Trade Secret Act, Virginia Code Section 59.1-336(4). "Proprietary Information" includes, but is not limited to, the following types of information (whether or not reduced to writing): Appian's fees, rates, sales data, customer lists, discoveries, inventions, concepts, software in various states of development and related documentation, design sheets, design data, drawings, design specifications, techniques, consulting or development methodologies, models, source code, object code, documentation, diagrams, flow charts, research, development, processes, training materials, templates, procedures, "know-how," tools, client identities, client accounts, web design needs, client advertising needs and history, client reports, client proposals, product information and reports, accounts, billing methods, pricing, data, sources of supply, business methods, production or merchandising systems or plans, marketing, sales and business strategies and plans, finances, operations, and information regarding employees. Notwithstanding the foregoing, information publicly known that is generally employed by the trade at or after the time you first learn of such information (other than as a result of your breach of this Agreement) shall not constitute Proprietary Information.

You agree to hold Confidential Information in the strictest of confidence and further agree not to release, divulge, misappropriate, publish or communicate Confidential Information to any person or entity outside of Appian without the express written consent of Appian's CEO or his express designee. You understand that the obligations contained in this Section are effective upon your first day of employment, or earlier (if you receive Confidential Information sooner), and shall survive the expiration of this Agreement, regardless of the reason your employment with Appian is terminated. Furthermore, nothing contained in this Section of the Agreement is designed to waive its statutory rights to seek relief pursuant to the Virginia Trade Secrets Act, Virginia Code Section 59.1-336 et seq.

6. Inventions. For the purposes of this Agreement, "Inventions" mean any concepts, ideas, processes, designs, specifications, improvements, discoveries or other developments,

whether or not reduced to practice or patentable, that you conceive or create, in whole or in part, alone or jointly with others, during your employment by the Company, whether during normal work hours or otherwise, if such Inventions meet one of the following conditions (i) the Inventions directly relate to the Company's business (including without limitation the Company's present or contemplated products and research) or to tasks assigned to you by or on behalf of the Company or (ii) the Inventions are written or developed using any of the Company's equipment, facilities, materials, trade secrets, labor, money, time or other resources. "Inventions" also shall be deemed to include any concepts, ideas, processes, designs, specifications, improvements, discoveries or other developments, whether or not reduced to practice or patentable, that you

conceive or create within ninety (90) days after your employment with the Company ends that directly relate to the Company's business as conducted prior to the date your employment ended or to any tasks assigned to you by or on behalf of the Company at any time during the last two (2) years of your employment by the Company. "Inventions" do not include any concepts, ideas, processes, designs, discoveries or other developments reduced to practice prior to joining Appian.

6.1 Assignment of Inventions. You agree that all Inventions are the sole and exclusive property of the Company and hereby assign to the Company all right, title and interest in all Inventions.

7. Termination and Resignation. Your employment is terminable at-will. That means that you or Appian may terminate your employment relationship at any time, for any reason or no reason at all. In the event that you terminate your employment, you will be entitled to earned and unpaid salary, less required and authorized withholdings and deductions, through your last day of employment. Regardless of the basis of your termination of employment, you agree to provide all assistance requested by Appian in transitioning your duties, responsibilities, clients and other Appian relationships to other Appian personnel, both during your employment and after your termination or resignation. Furthermore, you agree to cooperate with Appian from time to time as necessary concerning matters that may have arisen during the course of your employment with Appian. Such cooperation is an express condition of this Agreement.

8. Return of Company Materials. Upon the termination of your employment with Appian, regardless of the basis of the termination, you shall promptly deliver to Appian any of the following items or materials: any laptop or personal computer issued to you, or paid for, by Appian; any material, in any form whatsoever, that constitutes Appian's Confidential Information, Trade Secret and/or Proprietary Information; the Employee Handbook; the Consulting Best Practices Book ("CBP"); and any other material that is the property of Appian Corporation or Appian Corporation's customers, including, but not limited to, books, key cards, passes, and other material. You agree that, to the extent permissible by law, Appian may withhold payment of any compensation or reimbursements until you return all such Appian materials.

9. Authority Limited. It is expressly agreed that you shall have no right or authority at any time to make any contract or binding promise of any nature on behalf of Appian, without Appian's express written consent except within established duties of your employment.

10. Assignment and Survival. The rights and obligations of Appian under this Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of Appian. Your rights and obligations are personal and may not be assigned or delegated without the Company's proper written consent. However, if you become deceased prior to the expiration of this Agreement, any sums that may be due to you as of the date of your death shall be paid to your executor, administrator, heirs, personal representative, successors or assigns. Furthermore, it is expressly understood that the obligations under Sections 3, 4, or 5 of this Agreement shall survive any termination of this Agreement.

11. Remedies. You acknowledge that the damages Appian will suffer as a result of your breach of any provision of Sections 3, 4, or 5 of this Agreement may be impossible to reasonably

calculate and that violation of this Agreement will irreparably harm Appian. Accordingly, you agree that Appian will be entitled, in addition to all other rights and remedies that may be available, to obtain injunctive relief enjoining and restraining you from committing a breach of this Agreement. You also agree that in the event Appian is successful in whole or in part in any legal action against you under this Agreement, Appian will be entitled to recover all costs, including reasonable attorney fees from you.

12. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not nullify the validity of the remaining provisions of this Agreement. If any provision of this Agreement is determined by a court to be overly broad in duration, geographical coverage or scope, or unenforceable for any other reason, such provision will be narrowed so that it will be enforced as much as permitted by law.

13. Choice of Law. The laws of the Commonwealth of Virginia shall govern this Agreement. You and Appian consent to the jurisdiction and venue of any state or federal court in the Commonwealth of Virginia.

14. Waiver. Any party's waiver of any other party's breach of any provision of this Agreement shall not waive any other right or any future breaches of the same or any other provision. Appian's CEO may, in his or her sole discretion, waive in writing any provision of this Agreement.

15. Notices. Any notices, requests, demands or other communications provided for in this Agreement shall be in writing and shall be given either manually or by certified mail. Notice to Appian shall be addressed to Human Resources. Notice to you shall be addressed to the last address you have filed with Human Resources. You may change your address by providing written notice in accordance with this Section. If you fail to keep Appian informed of your most recent address, you agree to waive any claim against Appian related to any damage you may suffer as a result of Appian failing to provide you with a notice under this or any other Agreement you may have with Appian.

16. Entire Agreement. This Agreement is the entire agreement between you and Appian regarding these matters and supersedes any verbal and written agreements on such matters. This Agreement may be modified only by written agreement signed by you and Appian's CEO. All Section headings are for convenience only and do not modify or restrict any of this Agreement's terms.

17. Counterparts. For convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

The parties state that they have read, understood and agree to be bound by this Agreement and that they have had the opportunity to seek the advice of legal counsel before signing it and have either sought such counsel or have voluntarily decided not to do so:

APPIAN CORPORATION

By: /s/ Dawn Mitchell

Date: March 25, 2020

EMPLOYEE

By: /s/ Pavel Zamudio-Ramires

Date: March 31, 2020

**SENIOR SECURED CREDIT FACILITIES**

**CREDIT AGREEMENT**

dated as of November 3, 2022,

among

**APPIAN CORPORATION,**  
as the Borrower,

**THE SEVERAL LENDERS FROM TIME TO TIME PARTY HERETO,**

and

**SILICON VALLEY BANK,**  
as Administrative Agent, Issuing Lender and Swingline Lender, and Co-Documentation Agent

and

**WELLS FARGO BANK, N.A.,**  
as Co-Documentation Agent

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## CREDIT AGREEMENT

**THIS CREDIT AGREEMENT** (this “*Agreement*”), dated as of November 3, 2022, is entered into by and among **APPIAN CORPORATION**, a Delaware corporation (the “*Borrower*”), the several banks and other financial institutions or entities from time to time party to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), **SILICON VALLEY BANK (“SVB”)**, as the Issuing Lender and the Swingline Lender, and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, together with any successors and assigns in such capacities, the “*Administrative Agent*”).

### RECITALS:

**WHEREAS**, the Borrower desires to obtain financing to refinance the Existing SVB Credit Facility, as well as for general corporate purpose, working capital financing, and letter of credit facilities;

**WHEREAS**, the Lenders have agreed to extend certain credit facilities to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate principal amount not to exceed \$150,000,000, consisting of a term loan facility in the aggregate principal amount of \$100,000,000, and a revolving loan facility in an aggregate principal amount of up to \$50,000,000 including a letter of credit sub-facility in the aggregate availability amount of \$15,000,000 (as a sublimit of the revolving loan facility); and a swingline sub-facility in the aggregate availability amount of \$10,000,000 (as a sublimit of the revolving loan facility);

**WHEREAS**, the Borrower has agreed to secure all of its Obligations by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on substantially all of its assets subject to certain exclusions under the Loan Documents; and

**WHEREAS**, each of the Guarantors has agreed to guarantee the Obligations of the Borrower and to secure its respective Obligations in respect of such guarantee by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on substantially all of its assets subject to certain exclusions under the Loan Documents.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“**ABR**”: for any day, a rate per annum equal to the higher of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect for such day plus 0.50%; provided that in no event shall the ABR be deemed to be less than 1.50%. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of the change in such rates.

“**ABR Loans**”: Loans, the rate of interest applicable to which is based upon the ABR.

“**Accommodation Payment**”: as defined in Section 2.25(1).

“**Acceptable Foreign Jurisdiction**”: the United Kingdom and Switzerland.

“**Adjusted Term SOFR**”: for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as

so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be equal to the Floor.

“**Administrative Agent**”: SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

“**Affected Financial Institution**”: (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affected Lender**”: as defined in [Section 2.23](#).

“**Affiliate**”: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

“**Agent Parties**”: as defined in [Section 10.2\(c\)\(ii\)](#).

“**Aggregate Exposure**”: with respect to any Lender at any time, an amount equal to the sum of (a) without duplication of clause (b), the aggregate then unpaid principal amount of such Lender’s Term Loans, (b) without duplication of clause (a), the aggregate amount of such Lender’s Term Loan Commitments then in effect, (c) the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding, and (d) without duplication of clause (c), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

“**Aggregate Exposure Percentage**”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“**Agreement**”: as defined in the preamble hereto.

“**Agreement Currency**”: as defined in [Section 10.19](#).

“**Allocable Amount**”: as defined in [Section 2.25\(1\)](#).

“**Anti-Money Laundering Laws**”: the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

“**Appian Switzerland**”: Appian Software International LLC.

“**Appian UK**”: Appian Europe Limited (U.K.).

“**Appian UK Stock Pledge Agreement**”: an executed English law governed share charge granted by the Borrower in respect of 100% of the issued and outstanding shares of Capital Stock (voting and non-voting) held by it in Appian UK, in form and substance reasonably satisfactory to the Administrative Agent.

“**Applicable Foreign Obligor Documents**”: is defined in [Section 4.31\(a\)](#).

“**Applicable Margin**”: (i) from the Closing Date through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending June 30, 2023, together with a Compliance Certificate in respect thereof as contemplated by [Section 6.2\(b\)](#), the rates per annum corresponding to Level 1 in the tables below, (ii) commencing on the day after the date for which the consolidated financial statements of

the Group Members ending on June 30, 2023 and the accompanying Compliance Certificate in respect thereof are delivered through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending December 31, 2023, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b) (the “*Floating Rate Trigger Date*”), the rates per annum corresponding to Level 2 in the tables below; provided that, if the financial statements and Compliance Certificate most recently delivered during this period demonstrates that the Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio is greater than 0.60x the rates per annum corresponding to Level 1 in the tables below shall apply and (iii) commencing on the first day after the Floating Rate Trigger Date, “*Applicable Margin*” shall mean the rate per annum set forth under the relevant column heading below:

From the Closing Date through the Cash Flow Trigger Date:

Category	Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio	SOFR Applicable Margin	ABR Applicable Margin
1	> 0.60x	3.50%	2.50%
2	≤ 0.60x but >0.55x	3.25%	2.25%
3	≤ 0.55x but >0.50x	3.00%	2.00%
4	≤ 0.50x but > 0.45x	2.75%	1.75%
5	≤ 0.45x	2.50%	1.50%

From and after the Cash Flow Trigger Date

Category	Maximum Consolidated Total Leverage Ratio	SOFR Applicable Margin	ABR Applicable Margin
1	> 3.50x	3.50%	2.50%
2	≤ 3.50x but > 3.00x	3.00%	2.00%
3	≤ 3.00 but > 2.00x	2.50%	1.50%
4	≤ 2.00x but > 1.00x	2.00%	1.00%
5	≤ 1.00x	1.50%	0.50%

Notwithstanding the foregoing, (a) if the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of the Group Members, the Applicable Margin shall be the rates corresponding to Level 1 in the foregoing tables until such financial statements and Compliance Certificate are delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess

of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

**“Application”**: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

**“Approved Fund”**: any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“Asset Sale”**: any Disposition of property or series of related Dispositions of property (excluding any such Disposition of property permitted by clauses (a) through (m) and clause (o) of [Section 7.5](#)) that yields gross proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of \$2,500,000.

**“Assignment and Assumption”**: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by [Section 10.6](#)), and accepted by the Administrative Agent, in substantially the form of [Exhibit E](#) or any other form approved by the Administrative Agent.

**“Available Revolving Commitment”**: at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time, minus (b) the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit at such time, minus (c) the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time, minus (d) the aggregate principal balance of any Revolving Loans and Swingline Loans outstanding at such time.

**“Available Tenor”**: as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to [Section 2.17\(b\)\(iv\)](#).

**“Bail-In Action”**: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

**“Bail-In Legislation”**: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other Insolvency Proceedings).

**“Bankruptcy Code”**: Title 11 of the United States Code entitled “Bankruptcy.”

**“Basel III”**: (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: a global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; (b)

the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

“**Benchmark**”: initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(b)(i).

“**Benchmark Replacement**”: with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**”: with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Date**”: the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**”: the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**”: the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b).

“**Beneficial Ownership Certification**”: a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

“**Beneficial Ownership Regulation**”: United States 31 C.F.R. § 1010.230.

“**Benefit Plan**”: any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Benefitted Lender**”: as defined in Section 10.7(a).



“**Blocked Person**”: as defined in Section 7.22.

“**Board**”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Borrower**”: as defined in the preamble hereto.

“**Borrowing**”: a borrowing consisting of simultaneous Loans of the same Type and, in the case of a SOFR Borrowing, having the same Interest Period made by the Lenders.

“**Borrowing Date**”: any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

“**Business**”: as defined in Section 4.17(b).

“**Business Day**”: a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York or the State of California are authorized or required by law to close.

“**Capital Lease Obligations**”: as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP; provided, that for all purposes hereunder, any obligations of such Person that would have been treated as operating leases in accordance with Accounting Standards Codification 840 (regardless of whether or not then in effect) shall be treated as operating leases for purposes of all financial definitions, calculations and covenants, without giving effect to Accounting Standards Codification 842 requiring operating leases to be recharacterized or treated as capital leases.

“**Capital Stock**”: with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**Cash Collateralize**”: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other credit support, in an amount equal to 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the aggregate Dollar Equivalent amount of L/C Exposure, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Lender; (b) with respect to Obligations arising under any Cash Management Agreement in connection with Cash Management Services, the applicable Cash Management Bank, for its own or any of its applicable Affiliate’s benefit, as provider of such Cash Management Services, cash or deposit account balances or, if the Administrative Agent and the applicable Cash Management Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Cash Management Bank; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or deposit account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Equivalents”**: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six (6) months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six (6) months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s; (f) securities with maturities of six (6) months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000.

**“Cash Flow Trigger Date”**: November 3, 2025.

**“Cash Management Agreement”**: as defined in the definition of “Cash Management Services.”

**“Cash Management Bank”**: any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

**“Cash Management Services”**: cash management and other services provided to one or more of the Loan Parties by a Cash Management Bank which may include treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system), merchant services, direct deposit of payroll, business credit card (including so-called “purchase cards”, “procurement cards” or “p-cards”), credit card processing services, debit cards, stored value cards, and check cashing services identified in such Cash Management Bank’s various cash management services or other similar agreements (each, a **“Cash Management Agreement”**).

**“Casualty Event”**: any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

**“Certificated Securities”**: as defined in [Section 4.19\(a\)](#).

**“Change of Control”**: (a) the Permitted Investor shall cease to have the power to vote or direct the voting of securities having at least 50.1% of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (b) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), excluding the Permitted Investor, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of a percentage of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis) greater than 40% or more of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (c) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (disregarding individuals who cease to serve due to death

or disability) (i) who were members of that board or equivalent governing body on the first (1<sup>st</sup>) day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (d) at any time, the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each Guarantor and Appian UK and Appian Switzerland free and clear of all Liens other than Liens permitted by Section 7.3, or Appian UK shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of Appian Switzerland free and clear of all Liens other than Liens permitted by Sections 7.3.

“**Closing Date**”: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders or the Required Lenders.

“**Code**”: the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“**Collateral Information Certificate**”: the Collateral Information Certificate to be executed and delivered by the Borrower and each other Loan Party pursuant to Section 5.1.

“**Collateral-Related Expenses**”: all reasonable, documented, out-of-pocket costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent and its agents and counsel, and reimbursement for all other reasonable and documented costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“**Commitment**”: as to any Lender, the sum of its Term Loan Commitment and its Revolving Commitment.

“**Commitment Fee Rate**”: (i) from the Closing Date through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending June 30, 2023, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), the rate per annum corresponding to Level 1 in the table below, (ii) commencing on the day after the date for which the consolidated financial statements of the Group Members ending on June 30, 2023 and the accompanying Compliance Certificate in respect thereof are delivered through the Floating Rate Trigger Date, the rate per annum corresponding to Level 2 in the table below; provided that, if the financial statements and Compliance Certificate delivered at any time during this period demonstrates that the Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio is greater than 0.60x the rate per annum corresponding to Level 1 in the table below shall apply and (iii) commencing on the first day after the Floating Rate Trigger Date, “**Commitment Fee Rate**” shall mean the rate per annum set forth under the relevant column heading below:

From the Closing Date through the Cash Flow Trigger Date:

Category	Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio	Unused Line Fee Margin
1	> 0.60x	0.35%
2	≤ 0.60x but >0.55x	0.35%
3	≤ 0.55x but >0.50x	0.30%
4	≤ 0.50x but > 0.45x	0.25%
5	≤ 0.45x	0.25%

From and after the Cash Flow Trigger Date

Category	Maximum Consolidated Total Leverage Ratio	Unused Line Fee Margin
1	> 3.50x	0.35%
2	≤ 3.50x but > 3.00x	0.35%
3	≤ 3.00 but > 2.00x	0.30%
4	≤ 2.00x but > 1.00x	0.25%
5	≤ 1.00x	0.25%

If the financial statements required by [Section 6.1](#) and the related Compliance Certificate required by [Section 6.2\(b\)](#) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of the Group Members, the Commitment Fee Rate shall be the rates corresponding to Level 1 in the foregoing table until such financial statements and Compliance Certificate are delivered, and (c) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

“**Commodity Exchange Act**”: the Commodity Exchange Act (7 U.S.C. Section 1 *et seq.*), as amended from time to time, and any successor statute.

“**Communications**”: as defined in [Section 10.2\(c\)\(ii\)](#).

“**Compliance Certificate**”: a certificate duly executed by a Responsible Officer substantially in the form of [Exhibit B](#).

“**Conforming Changes**”: with respect to either the use or administration of any Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any

similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Connection Income Taxes**”: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Capital Expenditures**”: for any period, with respect to the Group Members, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Group Members) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of the Group Members; provided that, “Consolidated Capital Expenditures” shall not include (a) expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (b) expenditures made as a tenant as leasehold improvements during such period to the extent reimbursed by the landlord during such period, (c) the trade in of equipment or (d) expenditures to the extent, pursuant to a written agreement, such expenditures are reimbursed (or reimbursable and reasonably expected to be received in cash within one hundred twenty (120) days of the last day of such period), by Persons other than the Group Members.

“**Consolidated Adjusted EBITDA**”: with respect to the Group Members for any period, (a) Consolidated Net Income, plus (b) to the extent deducted in the calculation of Consolidated Net Income, (i) Consolidated Interest Expense, (ii) income tax expense, (iii) depreciation expense and amortization expense, (iv) stock-based compensation expense, (v) net foreign currency gains/(losses), and (vi) any unusual or non-recurring fees, expenses and charges including any fees, expenses and charges related to, arising out of or made in connection with any settlements, legal proceedings, investigations and regulatory matters (provided that the aggregate amount of fees and expenses and non-recurring charges added pursuant to this clause (vi) shall not exceed 15% of Consolidated Adjusted EBITDA (calculated prior to giving effect to such clause (vi) for such period)), plus (c) any increase in Short Term Deferred Revenue from the immediately preceding period, minus (d) any decrease in Short Term Deferred Revenue from the immediately preceding period, minus (e) capitalized software development costs for such period, minus (f) commissions to the extent capitalized in such period; provided that Consolidated Adjusted EBITDA for any period shall be determined on a Pro Forma Basis (in a manner reasonably acceptable to the Administrative Agent) to give effect to any Permitted Acquisitions or any disposition of any business or assets consummated during such period, in each case as if such transaction occurred on the first (1<sup>st</sup>) day of such period and in accordance with Regulation S-X promulgated by the SEC.

“**Consolidated Fixed Charge Coverage Ratio**”: with respect to the Group Members for any period, the ratio of (a) the sum of (i) Consolidated Adjusted EBITDA for such period minus (ii) the portion of taxes based on income actually paid in cash (net of any cash refunds received) during such period (including for purposes hereof, tax distributions made during such period minus (iii) Consolidated Capital Expenditures (excluding the principal amount funded with the Loans) incurred in connection with such expenditures) minus (iv) cash dividends, distributions and management fees paid to any Person that is not a Loan Party during such period, minus (v) obligations in respect of earn-outs paid or accrued as a liability in accordance with GAAP during such period to (b) Consolidated Fixed Charges for such period.

**“Consolidated Fixed Charges”**: with respect to the Group Members for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, plus (b) scheduled payments made during such period on account of principal of Indebtedness of the Group Members (including scheduled principal payments in respect of the Term Loans).

**“Consolidated Interest Expense”**: for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any credit extension and other Indebtedness of the Group Members, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

**“Consolidated Net Income”**: shall mean, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of the Group Members for such period taken as a single accounting period.

**“Consolidated Total Indebtedness”**: at any date, the aggregate principal amount of all Indebtedness of the Group Members at such date, determined on a consolidated basis in accordance with GAAP, but excluding any liabilities referred to in clauses (f) and (h) of the definition of “Indebtedness.”

**“Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio”**: as of any date, the ratio of (a) Consolidated Total Indebtedness of the Group Members as of such date to (b) the product of the sum of Recurring Revenue for the prior three (3) month period ended as of any such test period multiplied by four (4).

**“Consolidated Total Leverage Ratio”**: as at the last day of any period, the ratio of (a) Consolidated Total Indebtedness on such day, to (b) Consolidated Adjusted EBITDA for such period.

**“Contractual Obligation”**: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”**: the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Agreement”**: any account control agreement in form and substance reasonably satisfactory to the Administrative Agent entered into among the depository institution at which a Loan Party maintains a Deposit Account or the securities intermediary at which a Loan Party maintains a Securities Account, such Loan Party, and the Administrative Agent pursuant to which the Administrative Agent obtains control (within the meaning of the UCC or any other applicable law) over such Deposit Account or Securities Account.

**“Controlled Account”**: each Deposit Account and Securities Account that is subject to a Control Agreement in form and substance satisfactory to the Administrative Agent and the Issuing Lender.

**“Control Investment Affiliate”**: as to any Person, any other Person that (a) directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies.

**“Corresponding Tenor”**: with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Daily Simple SOFR”**: for any day (a **“SOFR Rate Day”**), a rate per annum equal to the greater of (a) SOFR for the day (such day a **“SOFR Determination Day”**) that is five (5) U.S. Government

Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

**"Data Protection Laws"** is all applicable laws, in any jurisdiction worldwide, that govern (i) the confidentiality, processing, privacy, security, protection, transfer or trans-border data flow of Personal Data, or (ii) electronic data privacy.

**"Debtor Relief Laws"**: the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**"Declined Amount"**: as defined in Section 2.12(e).

**"Default"**: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**"Default Rate"**: as defined in Section 2.15(c).

**"Defaulting Lender"**: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) become the subject of a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the

enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to [Section 2.24\(b\)](#)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

**“Deposit Account”**: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Deposit Account Control Agreement”**: any Control Agreement entered into by the Administrative Agent, a Loan Party and a financial institution holding a Deposit Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Deposit Account.

**“Designated Jurisdiction”**: any country, region or territory to the extent that such country, region or territory itself is the subject of any Sanction.

**“Determination Date”**: as defined in the definition of “Pro Forma Basis”.

**“Discharge of Obligations”**: subject to [Section 10.8](#), the satisfaction of the Obligations (including all such Obligations relating to Cash Management Services) by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank or Qualified Counterparty) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Cash Management Services, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations under or in respect of Specified Swap Agreements and Cash Management Services, to the extent (a) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank), (c) no Obligations in respect of any Cash Management Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Cash Management Services have been Cash Collateralized in accordance with the terms hereof), and (d) the aggregate Commitments of the Lenders are terminated.

**“Disposition”**: with respect to any property (including, without limitation, Capital Stock of any Group Member), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer, encumbrance or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) and any issuance of Capital Stock of any Group Member. The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings.

**“Disqualified Stock”**: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Group Members may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

**“Division”**: in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of



such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Company Act, or any analogous action taken pursuant to any other applicable Requirements of Law.

“**Dollars**” and “**\$**”: dollars in lawful currency of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a currency other than Dollars, the equivalent amount therefor in Dollars as determined by the Administrative Agent and Issuing Lender at such time on the basis of the Spot Rate for the purchase of Dollars with such currency.

“**Domestic Subsidiary**”: any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States.

“**EEA Financial Institution**”: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**”: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**”: any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Election Period**”: as defined in Section 2.27(c).

“**Eligible Assignee**”: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

“**Environmental Laws**”: any and all foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

“**Environmental Liability**”: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Group Member directly or indirectly resulting from or based upon (a) a violation of an Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the release or threatened release of any Materials of Environmental Concern into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**ERISA**”: the Employee Retirement Income Security Act of 1974, as amended, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“**ERISA Affiliate**”: each business or entity which is, or within the last six years was, a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c), (m) or (n) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

**“ERISA Event”**: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Loan Party or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Group Member may be directly or indirectly liable; (m) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Loan Party or any ERISA Affiliate thereof may be directly or indirectly liable; (n) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (o) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Group Member in connection with any such Plan; (p) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to qualify for exemption from taxation under Section 501(a) of the Code; (q) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (r) noncompliance with any requirement of Section 409A or 457 of the Code; or (s) the establishment or amendment by any Group Member of any “welfare plan” as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that could be reasonably likely to materially increase the liability of any Group Member.

**“ERISA Funding Rules”**: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

**“Erroneous Payment”**: as defined in [Section 9.15\(a\)](#).

**“Erroneous Payment Deficiency Assignment”**: as defined in [Section 9.15\(d\)](#).

**“Erroneous Payment Impacted Class”**: as defined in Section 9.15(d).

**“Erroneous Payment Return Deficiency”**: as defined in Section 9.15(d).

**“Erroneous Payment Subrogation Rights”**: as defined in Section 9.15(d).

**“EU Bail-In Legislation Schedule”**: the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

**“Event of Default”**: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**“Exchange Act”**: the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

**“Excluded Account”**: any Deposit Account or Securities Account that is (a) a zero balance account, (b) for funding withholding tax, trust, escrow, payroll, customer funds, workers’ compensation claims, employee stock purchase plans, 401(k) benefits, health care benefits, retirement benefits, other employee benefits or other fiduciary account, or similar operational disbursement account, and (c) petty cash accounts and other deposit accounts with balances which shall not at any time exceed \$100,000 individually or \$1,000,000 in the aggregate for all such accounts.

**“Excluded Foreign Subsidiary”**: any Foreign Subsidiary that (a) does not own any Capital Stock of any Subsidiary that is a Loan Party, (b) does not own any material Intellectual Property and (c) as of the last day of each fiscal quarter and at any other date of determination does not (A) hold assets (which shall exclude for the avoidance of doubt assets in the form of intercompany investments in other Group Members) representing 5% (7% in the case of Appian Software Germany GmbH) or more of the Borrower’s consolidated total tangible assets individually or 12.5% or more in the aggregate with all other Excluded Foreign Subsidiaries as of such date (determined in accordance with GAAP) or (B) generate more than 5% individually or in the aggregate with all other such Excluded Foreign Subsidiaries other than with respect to Appian Switzerland (or in the case of Appian Switzerland, 40% individually or in the aggregate with all such other Excluded Foreign Subsidiaries) of the Borrower’s consolidated total revenues determined in accordance with GAAP for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1(b). If, as of the last day of each fiscal quarter and at any other date of determination, any Excluded Foreign Subsidiary (A) shall hold assets (which shall exclude for the avoidance of doubt assets in the form of intercompany investments in other Group Members) representing 5% (7% in the case of Appian Software Germany GmbH) or more of the Borrower’s consolidated total tangible assets individually or 12.5% or more in the aggregate with all other Excluded Foreign Subsidiaries as of such date (determined in accordance with GAAP) or (B) has generated more than 5% individually or in the aggregate with all other such Excluded Foreign Subsidiaries other than with respect to Appian Switzerland (or in the case of Appian Switzerland, 40% individually or in the aggregate with all such other Excluded Foreign Subsidiaries) of the Borrower’s consolidated total revenues determined in accordance with GAAP for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1(b), then unless waived by the Administrative Agent in its sole discretion (other than if such Subsidiary is organized under the laws of an Acceptable Foreign Jurisdiction and such Subsidiary is requested to be joined as a Loan Party by the Required Lenders), Borrower will cause such Excluded Foreign Subsidiary or such Excluded Foreign Subsidiaries to become Loan Parties pursuant to Section 6.12 and provide local law governed security documents such that the forgoing test is satisfied. For the avoidance of doubt, no Excluded Foreign Subsidiary shall own (1) any Capital Stock of any Subsidiary that is a Loan Party, (2) or any material Intellectual Property. No Borrower or Guarantor shall be permitted to be designated as an Excluded Foreign Subsidiary.

**“Excluded Swap Obligations”**: with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee Obligation of such Guarantor with respect to, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading

Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such Guarantee Obligation of such Guarantor, or the grant by such Guarantor of such Lien, becomes effective with respect to such Swap Obligation. If such a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee Obligation or Lien is or becomes excluded in accordance with the first sentence of this definition.

**"Excluded Taxes"**: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.20(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**"Existing Letters of Credit"**: the letters of credit described on Schedule 1.1B.

**"Existing SVB Credit Facility"**: the credit facility governed by that certain Third Amended and Restated Loan and Security Agreement dated as of November 1, 2017, by and between the Borrower and SVB, as amended and in effect immediately prior to the Closing Date.

**"Facility"**: each of (a) the Term Loan Facility, (b) the L/C Facility (which is a sub-facility of the Revolving Facility), (c) the Swingline Facility (which is a sub-facility of the Revolving Facility) and (d) the Revolving Facility.

**"FASB ASC"**: the Accounting Standards certification of the Financial Accounting Standards Board.

**"FATCA"**: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**"Federal Funds Effective Rate"**: for any day, the greater of (a) 0.00% and (b) the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

**"Fee Letter"**: the letter agreement dated September 22, 2022, between the Borrower and the Administrative Agent.

**"Floating Rate Trigger Date"**: as defined in the definition of "Applicable Margin".

**"Flood Laws"**: the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

**"Floor"**: a rate of interest equal to 0.50% per annum.

“**Foreclosed Borrower**”: as defined in Section 2.25.

“**Foreign Currency**”: Australian Dollars.

“**Foreign Lender**”: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“**Foreign Obligor**”: is any Loan Party which is organized in a jurisdiction other than the United States.

“**Foreign Subsidiary**”: any Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**Fronting Exposure**”: at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender’s L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“**Fund**”: any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“**Funding Office**”: the Revolving Loan Funding Office or the Term Loan Funding Office, as the context requires.

“**GAAP**”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any “**Accounting Change**” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “**Accounting Changes**” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC, or the adoption of IFRS.

“**GDPR**”: the EU General Data Protection Regulation EU/2016/679 and any laws implementing or supplementing the GDPR.

“**Governmental Approval**”: any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**”: the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any group or body charged with setting accounting or regulatory capital rules or standards (including the Financial Standards

Board, the Bank for International Settlements, the Basel Committee on Banking Supervision and any successor or similar authority to any of the foregoing).

“**Group Members**”: the collective reference to the Borrower and its Subsidiaries.

“**Guarantee and Collateral Agreement**”: the Guarantee and Collateral Agreement to be executed and delivered by the Loan Parties, substantially in the form of Exhibit A.

“**Guarantee Obligation**”: as to any Person (the “**guaranteeing person**”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “**primary obligations**”) of any other third Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“**Guarantors**”: a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the requirements of Section 6.12 hereof (and the definition of “Excluded Foreign Subsidiary”) and the Guarantee and Collateral Agreement.

“**IFRS**”: international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“**Illegality Notice**”: as defined in Section 2.19.

“**Increase Effective Date**”: as defined in Section 2.27(d).

“**Incremental Term Loan**”: as defined in Section 2.27(a).

“**Incremental Revolving Commitment**”: as defined in Section 2.27(b).

“**Incurred**”: as defined in the definition of “Pro Forma Basis”.

“**Indebtedness**”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase,

redeem, retire, defease or otherwise make any payment in respect of any Capital Stock in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

**"Indemnified Taxes"**: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

**"Indemnitee"**: as defined in Section 10.5(b).

**"Insolvency Proceeding"**: (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including any Debtor Relief Law.

**"Intellectual Property"**: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**"Intellectual Property Security Agreement"**: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto delivered pursuant to Section 6.12, in each case as amended, restated, supplemented or otherwise modified from time to time.

**"Interest Payment Date"**: (a) as to any ABR Loan (including any Swingline Loan), the first (1<sup>st</sup>) Business Day of each fiscal quarter to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any SOFR Loan, (i) having an Interest Period of three (3) months or less, the last Business Day of such Interest Period and the final maturity date of such Loan and (ii) having an Interest Period longer than three (3) months, each Business Day that is three (3) months after the first (1<sup>st</sup>) day of such Interest Period, the last Business Day of such Interest Period and the final maturity date of such Loan, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

**"Interest Period"**: as to any SOFR Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such SOFR Loan and ending on the numerically corresponding day in the month that is one (1), three (3) or six (6) months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such SOFR Loan and ending on the numerically corresponding day in the month that is one (1), three (3) or six (6) months thereafter, as selected by the Borrower in a Notice of Conversion/Continuation delivered to the Administrative Agent not later than 10:00 A.M. on the date that is three (3) U.S. Government Securities Business Days prior to the last day of the then current Interest

Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date (in the case of Revolving Facility) or beyond the Term Loan Maturity Date (in the case of Term Loans);

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) no tenor that has been removed from this definition pursuant to Section 2.17(b) shall be available for specification in any Notice of Borrowing or Notice of Conversion/Continuation.

**“Interest Rate Agreement”**: any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with the Group Members’ operations, and (b) not for speculative purposes.

**“Inventory”**: all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Loan Party for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Loan Party’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

**“Investments”**: as defined in Section 7.7.

**“IRS”**: the Internal Revenue Service, or any successor thereto.

**“ISP”**: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**“Issuing Lender”**: as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit (including, without limitation, each Existing Letter of Credit), and (b) any other Lender that may become an Issuing Lender pursuant to Section 3.11 or 3.12, with respect to Letters of Credit issued by such Lender. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

**“Issuing Lender Fees”**: as defined in Section 3.3(a).

**“Judgment Currency”**: as defined in Section 10.19.

**“L/C Advance”**: each L/C Lender’s funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

**“L/C Commitment”**: as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lenders’ obligations and rights under and in respect of each Letter of



Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to Section 3.5(b)) in an aggregate Dollar Equivalent principal amount not to exceed the amount set forth under the heading “L/C Commitment” opposite such L/C Lender’s name on Schedule 1.1A or in the Assignment and Assumption pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

“**L/C Disbursements**”: a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

“**L/C Exposure**”: at any time, the sum of (a) the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit at such time, and (b) the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

“**L/C Facility**”: the L/C Commitments and the extensions of credit made thereunder.

“**L/C Fee Payment Date**”: as defined in Section 3.3(a).

“**L/C Lender**”: a Lender with an L/C Commitment.

“**L/C Percentage**”: as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender’s L/C Commitment, as such percentage may be adjusted as provided in Section 2.24.

“**L/C-Related Documents**”: collectively, each Letter of Credit (including any Existing Letter of Credit), all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender’s standard form documents for letter of credit issuances.

“**Lenders**”: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the L/C Lenders, the Issuing Lender and the Swingline Lender.

“**Letter of Credit**”: as defined in Section 3.1(a); provided that such term shall include each Existing Letter of Credit.

“**Letter of Credit Availability Period**”: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

“**Letter of Credit Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Fronting Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Maturity Date**”: the date occurring fifteen (15) days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“**Lien**”: any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**”: at any time, the sum of (a) Qualified Cash, and (b) the Available Revolving Commitment at such time.

“**Loan**”: any loan made or maintained by any Lender pursuant to this Agreement.

“**Loan Documents**”: this Agreement, each Security Document, each Note, the Fee Letter, each Assignment and Assumption, each Compliance Certificate, each Notice of Borrowing, each Notice of Conversion/Continuation, the Solvency Certificate, the Collateral Information Certificate, each L/C-Related Document, each subordination agreement or intercreditor agreement entered into pursuant to this Agreement, and any agreement creating or perfecting rights in cash collateral pursuant to the provisions of Section 3.10, or otherwise, and any amendment, waiver, supplement or other modification to any of the foregoing.

“**Loan Parties**”: each Group Member that is a party to a Loan Document, as a Borrower or a Guarantor.

“**Mandatory Prepayment Date**”: as defined in Section 2.12(e).

“**Material Adverse Effect**”: (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of the Group Members, taken as a whole; (b) a material impairment of the rights and remedies, taken as a whole, of the Administrative Agent and the Lenders under any Loan Document, or of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document to which it is a party, including a material impairment in the perfection or priority of the Administrative Agent’s Lien in any material Collateral or in the value of such Collateral.

“**Materials of Environmental Concern**”: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity, radiofrequency radiation at levels known to be hazardous to human health and safety.

“**MFN Protection**”: as defined in Section 2.27(h)(ii).

“**Minority Lender**”: as defined in Section 10.1(b).

“**Moody’s**”: Moody’s Investors Service, Inc.

“**Mortgaged Properties**”: the real properties as to which, pursuant to Section 6.12(b) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

“**Mortgages**”: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

“**Multiemployer Plan**”: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

“**Net Cash Proceeds**”: (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees,

investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document) and other customary costs, fees and expenses actually incurred in connection therewith and net of taxes paid and the Borrower's reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by any Group Member in connection with such Asset Sale or Recovery Event in the taxable year that such Asset Sale or Recovery Event is consummated, the computation of which shall, in each such case, take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary costs, fees and expenses actually incurred in connection therewith.

**“Non-Consenting Lender”**: any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

**“Non-Defaulting Lender”**: at any time, each Lender that is not a Defaulting Lender at such time.

**“Note”**: a Term Loan Note, a Revolving Loan Note or a Swingline Loan Note.

**“Notice of Borrowing”**: a notice substantially in the form of Exhibit J.

**“Notice of Conversion/Continuation”**: a notice substantially in the form of Exhibit K.

**“Obligations”**: (a) the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of the Loan Parties (and the other Group Members in the cash of obligations in respect of Cash Management Services) to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, and any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Cash Management Agreement, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, to the extent that any applicable Cash Management Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty) that are required to be paid by any Group Member pursuant any Loan Document, Cash Management Agreement, Specified Swap Agreement or otherwise and (b) Erroneous Payment Subrogation Rights. For the avoidance of doubt, the Obligations shall not include (i) any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender, or (ii) solely with respect to any Guarantor that is not a Qualified ECP Guarantor, any Excluded Swap Obligations of such Guarantor.

**“OFAC”**: the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

**“Operating Documents”**: for any Person as of any date, such Person's constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar

agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Other Connection Taxes**”: with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to [Section 2.23](#)).

“**Participant**”: as defined in [Section 10.6\(d\)](#).

“**Participant Register**”: as defined in [Section 10.6\(d\)](#).

“**Patriot Act**”: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“**Payment Recipient**”: as defined in [Section 9.15\(a\)](#).

“**PBGC**”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“**Pension Plan**”: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (b) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“**Periodic Term SOFR Determination Day**”: as defined in the definition of “Term SOFR”.

“**Permitted Acquisition**”: as defined in [Section 7.7\(n\)](#).

“**Permitted Investor**”: the collective reference to Matthew Calkins and any Controlled Investment Affiliate of Matthew Calkins.

“**Permitted Litigation Financing**”: any financing transaction or series of financing transactions that may be entered into by the Borrower secured by a Lien on the Qualified Litigation Rights or pursuant to which the Borrower may sell, convey or otherwise transfer to any Person or may grant a security interest in any Qualified Litigation Rights and the proceeds of such Qualified Litigation Rights.

“**Person**”: any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Personal Data**”: (a) any information or data that, alone or together with any other information or data (i) can be used to identify, directly or indirectly, an individual, or (ii) can be used to authenticate such individual; and (b) any other information pertaining to an individual that is regulated or protected by one or more of the Data Protection Laws.

“**Plan**”: (a) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by any Group Member or to

which any Group Member has ever made, or was obligated to make, contributions, (b) a Pension Plan, or (c) a Qualified Plan.

“**Plan Asset Regulations**”: 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, as amended from time to time.

“**Platform**”: any of Debt Domain, DebtX, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“**Preferred Stock**”: the preferred Capital Stock of the Borrower.

“**Prime Rate**”: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors).

“**Pro Forma Basis**”: with respect to any calculation or determination for any period, in making such calculation or determination on the specified date of determination (the “**Determination Date**”):

(a) pro forma effect will be given to any Indebtedness incurred by the Group Members (including by assumption of then outstanding Indebtedness or by a Person becoming a Subsidiary) (“**Incurred**”) after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first (1<sup>st</sup>) day of such period;

(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period;

(c) Consolidated Fixed Charges related to any Indebtedness no longer outstanding or to be repaid or redeemed on the Determination Date, except for Consolidated Interest Expense accrued during the reference period under a revolving credit to the extent of the commitment thereunder (or under any successor revolving credit) in effect on the Determination Date, will be excluded as if such Indebtedness was no longer outstanding or was repaid or redeemed on the first (1<sup>st</sup>) day of such period;

(d) pro forma effect will be given to: (A) the acquisition or disposition of companies, divisions or lines of businesses by the Group Members, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; and (B) the discontinuation of any discontinued operations but, in the case of Consolidated Fixed Charges, only to the extent that the obligations giving rise to Consolidated Fixed Charges will not be obligations of the Group Members following the Determination Date; in each case of clauses (A) and (B), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first (1<sup>st</sup>) day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of the Borrower in accordance with Regulation S-X under the Securities Act based upon the most recent four full fiscal quarters for which the relevant financial information is available.

“**Pro Forma Financial Statements**”: balance sheets, income statements and cash flow statements prepared by the Group Members that give effect (as if such events had occurred on such date) to (a) the

Loans to be made on the Closing Date and the use of proceeds thereof and (c) the payment of fees and expenses in connection with the foregoing, in each case prepared for (y) the most recently ended fiscal quarter as if such transactions had occurred on such date and (z) on a quarterly basis through the first full fiscal year after the Closing Date, and on an annual basis for each fiscal year thereafter through the Term Loan Maturity Date, in each case demonstrating pro forma compliance with the covenants set forth in Section 7.1.

“**Projections**”: as defined in Section 6.2(c).

“**Properties**”: as defined in Section 4.17(a).

“**PTE**”: a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Qualified Cash**”: as of any date of determination, unrestricted cash or Cash Equivalents of the Loan Parties that are deposited in an account that are deposit accounts or securities accounts; provided that, as of any date of determination from and after the sixtieth (60<sup>th</sup>) day after the Closing Date (or such later date as may be agreed by Administrative Agent in its sole discretion), Qualified Cash shall be the aggregate amount of unrestricted cash and Cash Equivalents held at such time by any Loan Party in a Deposit Account or a Securities Account (i) maintained with SVB or, (ii) otherwise, that is subject to a Control Agreement in favor of the Administrative Agent; provided further, for the avoidance of doubt, for purposes of calculating Qualified Cash, Deposit Accounts and Securities Accounts maintained with Affiliates of SVB shall not be included unless such accounts are subject to a Control Agreement in favor of the Administrative Agent.

“**Qualified Counterparty**”: with respect to any Specified Swap Agreement, any counterparty thereto that is a Lender or an Affiliate of a Lender or, at the time such Specified Swap Agreement was entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

“**Qualified ECP Guarantor**”: in respect of any Swap Obligation, (a) each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee Obligation of such Guarantor provided in respect of, or the Lien granted by such Guarantor to secure, such Swap Obligation (or guaranty thereof) becomes effective with respect to such Swap Obligation, and (b) any other Guarantor that (i) constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder, or (ii) can cause another Person (including, for the avoidance of doubt, any other Guarantor not then constituting a “Qualified ECP Guarantor”) to qualify as an “eligible contract participant” at such time by entering into a “keepwell, support, or other agreement” as contemplated by Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Qualified Litigation Rights**”: any claims or other rights of the Borrower pursuant to or related to the \$2.036 billion judgment in the case *Applan Corp. v. Pegasystems Inc. & Youyong Zou*, No. 2020-07216 (Fairfax Cty. Ct.).

“**Qualified Plan**”: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (b) that is intended to be tax-qualified under Section 401(a) of the Code.

“**Recipient**”: the (a) Administrative Agent, (b) any Lender or (c) the Issuing Lender, as applicable.

“**Recovery Event**”: any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member.

“**Recurring Revenue**”: with respect to any period, the sum of, without duplication, subscription revenue of the Group Members determined in accordance with GAAP attributable to licenses, SaaS,

subscriptions earned during the three month period pursuant to binding, written agreements which arise in the ordinary course of the Loan Parties' Business, excluding for the avoidance of doubt, any Recurring Revenues attributable from "Maintenance and Support" subscriptions or services, "Term License Subscriptions" and other 'on-premises' services or subscriptions; provided that Recurring Revenue for the fiscal quarter ended (a) June 30, 2022 shall be deemed to be \$57,083,000.

**"Refunded Swingline Loans"**: as defined in Section 2.7(b).

**"Register"**: as defined in Section 10.6(c).

**"Regulation D"**: Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**"Regulation T"**: Regulation T of the Board as in effect from time to time.

**"Regulation U"**: Regulation U of the Board as in effect from time to time.

**"Regulation X"**: Regulation X of the Board as in effect from time to time.

**"Reinvestment Deferred Amount"**: with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by any Loan Party in connection therewith that are not applied to prepay the Loans or other amounts pursuant to Section 2.12(e) as a result of the delivery of a Reinvestment Notice.

**"Reinvestment Event"**: any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

**"Reinvestment Notice"**: a written notice executed by a Responsible Officer stating that no Event of Default has occurred and that the Borrower (directly or indirectly through a Guarantor) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair assets useful in its business.

**"Reinvestment Prepayment Amount"**: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire or repair assets useful in the Borrower's business.

**"Reinvestment Prepayment Date"**: with respect to any Reinvestment Event, the earlier of (a) the date occurring one hundred eighty (180) days after such Reinvestment Event, and (b) the date on which the Group Members shall have determined not to, or shall have otherwise ceased to, acquire or repair assets useful in the Borrower's business with all or any portion of the relevant Reinvestment Deferred Amount.

**"Related Parties"**: with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

**"Relevant Governmental Body"**: the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**"Replacement Lender"**: as defined in Section 2.23.

**"Required Lenders"**: at any time, (a) if only one Lender holds the outstanding Term Loans and the Revolving Commitments, such Lender; and (b) if more than one Lender holds the outstanding Term Loans and Revolving Commitments, then at least two unaffiliated Lenders who hold more than 50.0% of the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding, and (ii) the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or,

if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this clause (b), the outstanding principal amount of the Term Loans held by any Defaulting Lender and the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that a Lender and its Affiliates shall be deemed one Lender.

**“Requirement of Law”**: as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or the administration, interpretation, implementation or application or determination of an arbitrator or a court or other Governmental Authority (including, for the avoidance of doubt, the Basel Committee on Banking Supervision and any successor thereto or similar authority or successor thereto), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Resolution Authority”**: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Responsible Officer”**: with respect to any Loan Party, the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of such Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party.

**“Restricted Payments”**: as defined in Section 7.6.

**“Revaluation Date”**: with respect to any Letter of Credit, each of the following: (a) each date of issuance, amendment and/or extension of a Letter of Credit denominated in a Foreign Currency, (b) each date of any payment by the Issuing Lender under any Letter of Credit denominated in a Foreign Currency, (c) in the case of all Existing Letters of Credit denominated in Foreign Currencies, the Closing Date, and (d) such additional dates as the Administrative Agent or the Issuing Lender shall determine or the Required Lenders shall require; provided that, the Administrative Agent or the Issuing Lender shall cause a Revaluation Date to occur in respect of each Letter of Credit denominated in a Foreign Currency not less than quarterly.

**“Revolving Commitment”**: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A (as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if any Incremental Revolving Commitments are made thereunder) or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments permitted hereunder). The original amount of the Total Revolving Commitments is \$50,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.

**“Revolving Commitment Period”**: the period from and including the Closing Date to the Revolving Termination Date.

**“Revolving Extensions of Credit”**: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s L/C Percentage of the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit (including the Existing Letter of Credit) at such time, plus (c) such Lender’s L/C Percentage of the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

**“Revolving Facility”**: the Revolving Commitments and the extensions of credit made thereunder.

**“Revolving Lender”**: each Lender that has a Revolving Commitment or that holds Revolving Loans.



**“Revolving Loan Conversion”**: as defined in Section 3.5(b).

**“Revolving Loan Funding Office”**: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

**“Revolving Loan Note”**: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

**“Revolving Loans”**: as defined in Section 2.4(a).

**“Revolving Percentage”**: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments of all Lenders shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

**“Revolving Termination Date”**: November 3, 2027.

**“S&P”**: Standard & Poor’s Ratings Services.

**“Sale Leaseback Transaction”**: any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.

**“Same Day Funds”**: (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in a Foreign Currency, same day or other funds as may be determined by the Administrative Agent or the Issuing Lender, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Foreign Currency.

**“Sanction(s)”**: any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed administered or enforced from time to time by (a) the United States Government (including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order), (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury or (e) any other relevant sanctions authority or Government Authority.

**“Sanctioned Entity”** means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”**: at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC, OFAC's consolidated “Non-Specially Designated National” list) , the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority or Government Authority, (b) any Person located, operating organized or ordinarily resident in a Designated Jurisdiction or a Sanctioned Entity, (c) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in the foregoing clauses (a) or (b) above or (d) below, or (d) any Person otherwise the target of any Sanctions.

“**SEC**”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“**Secured Parties**”: the collective reference to the Administrative Agent, the Lenders (including any Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), any Cash Management Bank (in its or their respective capacities as providers of Cash Management Services), and any Qualified Counterparties.

“**Securities Account**”: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

“**Securities Account Control Agreement**”: any Control Agreement entered into by the Administrative Agent, a Loan Party and a securities intermediary holding a Securities Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Securities Account.

“**Securities Act**”: the Securities Act of 1933, as amended from time to time and any successor statute.

“**Security Documents**”: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) each Intellectual Property Security Agreement, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (g) each Pledge Supplement (as defined in the Guarantee and Collateral Agreement), (h) each Assumption Agreement (as referenced in the Guarantee and Collateral Agreement), (i) the Appian UK Stock Pledge Agreement, and (j) all other security documents hereafter delivered to any applicable Cash Management Bank granting a Lien on any property of any Person to secure the Obligations of any Group Member arising under any Cash Management Agreement, and (k) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

“**Short Term Deferred Revenue**”: as of any date of determination, all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue but expected to be recognized as revenue within twelve (12) months from such date of determination.

“**SOFR**”: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**”: the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**”: the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Borrowing**”: as to any Borrowing, the SOFR Loans comprising such Borrowing.

“**SOFR Determination Day**”: as defined in the definition of “Daily Simple SOFR”.

“**SOFR Loan**”: a Loan that bears interest at a rate based on Adjusted Term SOFR.

“**SOFR Rate Day**”: as defined in the definition of “Daily Simple SOFR”.

“**SOFR Tranche**”: the collective reference to SOFR Loans under a particular Facility (other than the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

**“Solvency Certificate”**: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent pursuant to Section 5.1(s), which Solvency Certificate shall be in substantially the form of Exhibit D.

**“Solvent”**: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

**“Specified Swap Agreement”**: any Swap Agreement entered into by a Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) to the extent permitted under Section 7.12.

**“Spot Rate”**: for any currency, the rate determined by the Administrative Agent and the Issuing Lender to be the rate quoted by the Administrative Agent as the spot rate for the purchase of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by it if the Administrative Agent does not have as of the date of determination a spot buying rate for any such currency.

**“Subordinated Debt Document”**: any agreement, certificate, document or instrument executed or delivered by any Group Member and evidencing indebtedness of any Group Member which is subordinated to the Obligations (including payment, lien and remedies subordination terms, as applicable) in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

**“Subordinated Indebtedness”**: Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) satisfactory to the Administrative Agent in its sole discretion.

**“Subsidiary”**: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “**Subsidiary**” or to “**Subsidiaries**” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

**“Surety Indebtedness”**: as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Group Member as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Group Member.

**“SVB”**: as defined in the preamble hereto.

**“Swap Agreement”**: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Group Members shall be deemed to be a “Swap Agreement.”

**“Swap Obligation”**: with respect to any Guarantor, any obligation of such Guarantor to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**“Swap Termination Value”**: in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date any such Swap Agreement has been closed out and termination value determined in accordance therewith, such termination value, and (b) for any date prior to the date referenced in clause (a), the amount determined as the mark-to-market value for such Swap Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

**“Swingline Commitment”**: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

**“Swingline Lender”**: SVB, in its capacity as the lender of Swingline Loans or such other Lender as the Borrower may from time to time select as the Swingline Lender hereunder pursuant to Section 2.7(f); provided that such Lender has agreed to be a Swingline Lender.

**“Swingline Loan Note”**: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

**“Swingline Loans”**: as defined in Section 2.6.

**“Swingline Participation Amount”**: as defined in Section 2.7(c).

**“Synthetic Lease Obligation”**: the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

**“Taxes”**: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term Loan”**: the term loans made by the Lenders pursuant to Section 2.1, and to the extent funded, any Incremental Term Loans made by the Term Loan Lenders pursuant to Section 2.27.

**“Term Loan Commitment”**: as to any Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth under the heading “Term Loan Commitment” opposite such Lender’s name on Schedule 1.1A (as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if any Incremental Term Loans are advanced thereunder). The original aggregate principal amount of the Term Loan Commitments is \$100,000,000.

**“Term Loan Facility”**: the Term Loan Commitments and the Term Loans made thereunder.

“**Term Loan Funding Office**”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“**Term Loan Lender**”: each Lender that has a Term Loan Commitment or that holds a Term Loan.

“**Term Loan Maturity Date**”: November 3, 2027.

“**Term Loan Note**”: a promissory note in the form of Exhibit H-3, as it may be amended, supplemented or otherwise modified from time to time.

“**Term Loan Percentage**”: as to any Term Loan Lender at any time, the percentage which such Lender’s Term Loan Commitments and funded Term Loans then constitutes of the aggregate Term Loan Commitments and funded Term Loans of all Lenders.

“**Term SOFR**”: for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Term SOFR Adjustment**”: for any calculation with respect to a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

SOFR Loans:

<u>Interest Period</u>	<u>Percentage</u>
One (1) month	0.10%
Three (3) months	0.15%
Six (6) months	0.25%

“**Term SOFR Administrator**”: the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**”: the forward-looking term rate based on SOFR.

“**Term SOFR Borrowing**”: as to any Borrowing, the Loans bearing interest at a rate based on Adjusted Term SOFR comprising such Borrowing.

“**Total Credit Exposure**”: is, as to any Lender at any time, the unused Commitments, Revolving Extensions of Credit and outstanding Term Loans of such Lender at such time.

“**Total L/C Commitments**”: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to Section 2.10 or 3.5(b). The initial Dollar Equivalent amount of the Total L/C Commitments on the Closing Date is \$15,000,000.

**“Total Revolving Commitments”**: at any time, the aggregate amount of the Revolving Commitments then in effect.

**“Total Revolving Extensions of Credit”**: at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

**“Trade Date”**: as defined in Section 10.6(b)(i)(B).

**“Transferee”**: any Eligible Assignee or Participant.

**“Type”**: as to any Loan, its nature as an ABR Loan or a SOFR Loan.

**“UFCA”**: as defined in Section 2.25(l).

**“UFTA”**: as defined in Section 2.25(l).

**“UK Financial Institution”**: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”**: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”**: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unfriendly Acquisition”**: any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

**“Uniform Commercial Code”** or **“UCC”**: the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

**“United States”** and **“U.S.”**: the United States of America.

**“USCRO”**: the U.S. Copyright Office.

**“USPTO”**: the U.S. Patent and Trademark Office.

**“U.S. Government Securities Business Day”**: any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“U.S. Person”**: any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

**“U.S. Tax Compliance Certificate”**: as defined in Section 2.20(f).

**“Withholding Agent”**: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

**“Write-Down and Conversion Powers”**: (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to a given time of day shall, unless otherwise specified, be deemed to refer to Pacific time, and (vi) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated, amended and restated or otherwise modified from time to time.

(c) The words “*hereof*,” “*herein*” and “*hereunder*” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(e) Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person) on the first date of its existence. In connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person.

**1.3 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.4 Rates.** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each case, pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### **1.5 Exchange Rates.**

(a) The Administrative Agent or the Issuing Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Letts of Credit denominated in Foreign Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Lender, as applicable.

(b) Wherever in this Agreement the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in a Foreign Currency, such amount shall be the relevant Dollar Equivalent of such Dollar amount (rounded to the nearest unit of such Foreign Currency with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Lender, as the case may be.

## **SECTION 2 AMOUNT AND TERMS OF COMMITMENTS**

**2.1 Term Loan Commitments.** Subject to the terms and conditions hereof, each Term Loan Lender severally agrees to make a Term Loan to the Borrower on the Closing Date in an amount equal to the amount of the Term Loan Commitment of such Lender. The Term Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.13.

**2.2 Procedure for Term Loan Borrowing.** The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. one (1) Business Day prior to the anticipated Closing Date) requesting that the Term Loan



Lenders make the Term Loans on the Closing Date and specifying the amount to be borrowed. Upon receipt of such Notice of Borrowing, the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 12:00 P.M. on the Closing Date each Term Loan Lender shall make available to the Administrative Agent at the Term Loan Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall credit the account of the Borrower on the books of such office of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Term Loan Lenders in immediately available funds.

**2.3 Repayment of Term Loans.** Beginning on December 31, 2022, the Term Loans shall be repaid in consecutive quarterly installments on the last day of each fiscal quarter, each of which installments shall be in an amount equal to such Lender’s Term Loan Percentage multiplied by the installment amount set forth below opposite such installment payment date:

<u>Installment Payment Dates</u> ( <u>Calendar Quarter Ending</u> )	<u>Installment Amount</u>
December 31, 2022 through and including September 30, 2024	\$625,000 (plus, if applicable, 0.625% of the initial amount of any Incremental Term Loans)
December 31, 2024 and each quarter thereafter	\$1,250,000 (plus, if applicable, 1.25% of the initial amount of any Incremental Term Loans)

To the extent not previously paid, all Term Loans (including for the avoidance of doubt any Incremental Term Loans) shall be due and payable on the Term Loan Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

**2.4 Revolving Commitments.**

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “**Revolving Loan**” and, collectively, the “**Revolving Loans**”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to the aggregate outstanding amount of the Swingline Loans, the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit, and the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the amount of such Lender’s Revolving Commitment. In addition, such aggregate obligations shall not at any time exceed the Total Revolving Commitments in effect at such time. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Borrowings of more than one Type may be outstanding at the same time; provided that, there shall not be more than a total of seven (7) SOFR Borrowings outstanding at any time.

(b) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

**2.5 Procedure for Revolving Loan Borrowing.** The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. (a) three U.S. Government Securities Business

Days prior to the requested Borrowing Date, in the case of SOFR Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans (in each case, with originals to follow within three (3) Business Days)) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a)) may be given not later than 10:00 A.M. on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) the respective amounts of each such Type of Loan, (iv) in the case of SOFR Loans, the respective lengths of the initial Interest Period therefor, and (v) instructions for remittance of the proceeds of the applicable Loans to be borrowed. If no Interest Period is specified with respect to any requested SOFR Loan, the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a SOFR Loan having an Interest Period in excess of one (1) month prior to the date that is thirty (30) days after the Closing Date. Each borrowing under the Revolving Commitments shall be in an amount equal to in the case of ABR Loans or SOFR Loans, \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if the then Available Revolving Commitment is less than \$1,000,000, such lesser amount); provided that the Swingline Lender may request, on behalf of the Borrower, borrowings under the Revolving Commitments that are ABR Loans in other amounts pursuant to Section 2.7. Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its *pro rata* share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 10:00 A.M. on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent. No Revolving Loan will be made on the Closing Date.

**2.6 Swingline Commitment.** Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a "*Swingline Loan*" and, collectively, the "*Swingline Loans*") to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the Available Revolving Commitment would be less than zero, (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan and (d) the Borrower shall not request a Swingline Loan if the conditions specified in Section 5.2 have not been met, and the Swingline Lender shall not make any Swingline Loan if it has actual knowledge that the conditions specified in Section 5.2 have not been met or has received written notice from any Revolving Lender that the conditions specified in Section 5.2 have not been met. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only. The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Termination Date.

## **2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.**

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic notice (which telephonic notice must be received by the Swingline Lender not later than 10:00 A.M. on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$100,000 or a whole multiple of \$100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner

refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one (1) Business Day's telephonic notice given by the Swingline Lender no later than 10:00 A.M. and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of such Swingline Loan (each a "**Refunded Swingline Loan**") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M. one (1) Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Day's notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage ~~times~~ (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving thirty (30) days' prior notice to the Administrative Agent, the Lenders and the Borrower. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Required Lenders and the successor Swingline

Lender. After the resignation or replacement of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required or permitted to make any additional Swingline Loans.

## 2.8 [Reserved].

## 2.9 Fees.

(a) Upfront Fee. On or prior to the Closing Date, the Borrower agrees to pay to the Administrative Agent an upfront fee in the amount specified in the Fee Letter.

(b) Commitment Fee. As additional compensation for the Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in arrears, on the first (1<sup>st</sup>) Business Day of each quarter, in arrears, prior to the Revolving Termination Date and on the Revolving Termination Date, a fee for the Borrower's non-use of available funds in an amount equal to the Commitment Fee Rate per annum multiplied by the difference between (x) the Total Revolving Commitments (as they may be reduced from time to time) and (y) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans, excluding the aggregate principal amount of Swingline Loans which shall be deemed to be zero for purposes hereof, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time.

(c) Agency Fees. The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(d) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

**2.10 Termination or Reduction of Revolving Commitments.** The Borrower shall have the right, without premium or penalty, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided that no such termination or reduction of the Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments in effect at such time. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the Revolving Commitments then in effect; provided further, if in connection with any such reduction or termination of the Revolving Commitments a SOFR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. The Borrower shall have the right, without premium or penalty, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the L/C Commitments or, from time to time, to reduce the amount of the L/C Commitments; provided that no such termination or reduction of L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the L/C Commitments then in effect. Any reduction of the L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective Revolving Percentage. Any termination in full of the Total Revolving Commitments shall also result in a termination in full of the Total L/C Commitments, and any reduction of the Total Revolving Commitments that results in the Total L/C Commitments exceeding the Total Revolving Commitments shall result in a reduction to the Total L/C Commitments to an amount equal to the resulting Total Revolving Commitment.

## 2.11 Optional Loan Prepayments.

(a) Prepayments Generally. The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior thereto, in the case of SOFR Loans, and no later than 10:00 A.M. one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a SOFR Loan is prepaid, in whole or in part, on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; provided further that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked if the financing is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans and Revolving Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof. All optional prepayments shall be applied to either the Revolving Loans or the Term Loans as Borrower shall direct, and if to the Term Loans shall be applied in accordance with Section 2.18(b) and to scheduled principal installments of the foregoing on a pro rata basis to all such remaining installments (unless otherwise agreed to by the Required Lenders); provided that amounts prepaid (i.e., all regularly scheduled amortization installments of the Term Loans) shall remain included as Consolidated Fixed Charges for purposes of calculating the Consolidated Fixed Charge Coverage Ratio and shall be treated as if such prepayments had been applied pro rata to all regularly scheduled amortization installments of the Term Loans.

## 2.12 Mandatory Prepayments.

(a) [Reserved].

(b) If any Indebtedness shall be incurred by any Group Member (excluding any Indebtedness incurred in accordance with Section 7.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and other amounts as set forth in Section 2.12(e).

(c) If on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied on such date toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e); provided that notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales and Recovery Events that may be excluded from the foregoing requirement pursuant to a Reinvestment Notice shall not exceed \$5,000,000 in any fiscal year of the Borrower and (ii) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e).

(d) [Reserved].

(e) Amounts to be applied in connection with prepayments made pursuant to this Section 2.12 shall be applied to the prepayment of installments due in respect of the Term Loans on a pro rata basis as to such remaining installments and in accordance with Sections 2.3 and 2.18(b) (provided that any Term Loan Lender may decline any such prepayment (the aggregate amount of all such prepayments declined in connection with any particular prepayment, collectively, the “**Declined Amount**”), in which case the Declined Amount shall be distributed first, to the prepayment, on a *pro rata* basis, of the Term Loans held by Term Loan Lenders that have elected to accept such Declined Amounts; second, to the extent of any residual, if no Term Loans remain outstanding, to the prepayment of the Revolving Loans and Swingline Loans in accordance with Section 2.15(c) (with no corresponding permanent reduction in the Revolving Commitments); and third, to the extent of any residual, if no Term Loans, Revolving Loans or Swingline Loans remain outstanding, to the replacement of outstanding

Letters of Credit and/or the deposit of an amount in cash (in an amount not to exceed 105% of the then existing L/C Exposure) in a Cash Collateral account established with the Administrative Agent for the benefit of the L/C Lenders on terms and conditions satisfactory to the Issuing Lender. Each prepayment of the Loans under this Section 2.12 (except in the case of Revolving Loans that are ABR Loans and Swingline Loans, in the event all Revolving Commitments have not been terminated) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. The Borrower shall deliver to the Administrative Agent and each Term Loan Lender notice of each prepayment of Term Loans in whole or in part pursuant to this Section 2.12 not less than five (5) Business Days prior to the date such prepayment shall be made (each, a “**Mandatory Prepayment Date**”). Such notice shall set forth (i) the Mandatory Prepayment Date, (ii) the aggregate amount of such prepayment and (iii) the options of each Term Loan Lender to (x) decline or accept its share of such prepayment and (y) to accept Declined Amounts. Any Term Loan Lender that wishes to exercise its option to decline such prepayment or to accept Declined Amounts shall notify the Administrative Agent by facsimile not later than three (3) Business Days prior to the Mandatory Prepayment Date.

(f) The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.12, (i) a certificate signed by a Responsible Officer setting forth in reasonable detail the calculation of the amount of such prepayment or reduction and (ii) to the extent practicable, at least ten (10) days prior written notice of such prepayment or reduction (and the Administrative Agent shall promptly provide the same to each Lender). Each notice of prepayment shall specify the prepayment or reduction date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid.

(g) No prepayment fee shall be payable in respect of any mandatory prepayments made pursuant to this Section 2.12.

### **2.13 Conversion and Continuation Options.**

(a) The Borrower may elect from time to time to convert SOFR Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. one (1) Business Day prior to the proposed conversion date; provided that any such conversion of SOFR Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to SOFR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior to the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a SOFR Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If no Interest Period is specified with respect to any SOFR Loan in a Notice of Conversion/Continuation delivered by the Borrower to the Administrative Agent, the Borrower shall be deemed to have selected an Interest Period of one (1) month’s duration.

(b) The Borrower may elect from time to time to continue any SOFR Loan by giving the Administrative Agent prior notice of such election in a Notice of Conversion/Continuation, in accordance with the applicable provisions of the term “Interest Period” set forth in Section 1.1, of the length of the next Interest Period to be applicable to such SOFR Loan; provided that no SOFR Loan may be continued as such when any Event of Default has occurred and is continuing; provided further that (x) if the Borrower shall fail to give any required notice as described above in this paragraph, upon the expiration of the then current Interest Period, such SOFR Loans shall be automatically continued as SOFR Loans bearing interest at a rate based upon Adjusted Term SOFR and with an Interest Period of the same length as then expiring Interest Period or (y) if such continuation is not permitted pursuant to the preceding proviso, such SOFR Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(c) After the occurrence and during the continuance of an Event of Default, (i) the Borrower may not elect to have a Loan be made or continued as, or converted to, a SOFR Loan after the expiration of any Interest Period then in effect for such Loan and (ii), any Notice of Conversion/

Continuation given by the Borrower with respect to a requested conversion/continuation that has not yet occurred shall, at the Administrative Agent's option, be deemed to be rescinded by the Borrower and be deemed a request to convert or continue Loans referred to therein as ABR Loans.

**2.14 Limitations on SOFR Tranches.** Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of SOFR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the SOFR Loans comprising each SOFR Tranche shall be equal to \$1,000,000 or a whole multiple of \$100,000 in excess thereof (or, if the available Revolving Commitment is less than \$100,000, such lesser amount), and (b) no more than seven (7) SOFR Tranches shall be outstanding at any one time.

**2.15 Interest Rates and Payment Dates.**

(a) Each SOFR Loan shall bear interest at a rate per annum equal to Adjusted Term SOFR for the Interest Period therefor plus the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00% (the "**Default Rate**"); provided that the Default Rate shall apply to all outstanding Loans automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that (x) interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand and (y) in the event of any conversion of any SOFR Loan prior to the end of the Interest Period therefor, accrued interest on such SOFR Loan and any amounts owing pursuant to Section 2.21 shall be payable on the effective date of such conversion.

**2.16 Computation of Interest and Fees; Conforming Changes.**

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. Any change in the interest rate on a Loan resulting from a change in the ABR shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

(c) In connection with the use or administration of any Benchmark, the Administrative Agent shall have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of such Benchmark.

## 2.17 Inability to Determine Interest Rate.

(a) Inability to Determine Interest Rate. Subject to Section 2.17(b), if, as of any date:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, or

(ii) the Required Lenders determine that for any reason, in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that “Adjusted Term SOFR” for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent,

the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans shall be suspended (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately or, in the case of a Term SOFR Borrowing, at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.21.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the affected Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any



Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.17(b)(iv) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (i) the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period.

## **2.18 Pro Rata Treatment and Payments.**

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments shall be made *pro rata* according to the respective Term Loan Percentages, L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders; provided that, for the avoidance of doubt, each borrowing of Incremental Term Loans shall be made *pro rata* according to the respective Term Loan Commitments of the Lenders providing such Incremental Term Loans.

(b) Except as otherwise provided herein, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term Loans then held by the Term Loan Lenders. The amount of each principal prepayment of the Term Loans (whether optional or mandatory) shall be applied to reduce the then remaining installments of the Term Loans *pro rata* based upon the respective then remaining principal amounts thereof. Except as otherwise may be agreed by the Borrower and the each of the affected Term Loan Lenders, any prepayment of Loans shall be applied to the then outstanding Term Loans on a *pro rata* basis regardless of type. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M. on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Funding Office, in Dollars (except as otherwise provided herein with respect to a Foreign Currency) and in Same Day Funds. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in a Foreign Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Foreign Currency payment amount. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the SOFR Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Term Loans, (ii) make Revolving Loans, (iii) fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iv) fund its respective Swingline Participation Amount of any Swingline Loan, and (v) make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Term Loan Percentage, Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall (a) notify the Administrative Agent of the receipt of such payment, and (b) within five (5) Business Days of such receipt purchase (for cash at face value) from the other Term Loan Lenders, Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Term Loans or Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Term Loan Percentages, Revolving Percentages or L/C Percentages, as applicable; provided, however, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Term Loan Lenders, the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the

existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation. For the avoidance of doubt, no amounts received by the Administrative Agent or any Lender from any Guarantor that is not a Qualified ECP Guarantor shall be applied in partial or complete satisfaction of any Excluded Swap Obligations.

(l) [Reserved].

(m) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

## **2.19 Illegality; Requirements of Law.**

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, or to determine or charge interest based upon SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent) (an "**Illegality Notice**"), any obligation of the Lenders to make, and the right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended until each affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to ABR Loans, on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day, in each case, until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.21.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its Loans, Loan principal, Letters of Credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in

Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing, maintaining or participating in Letters of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum receivable or received by such Lender or other Recipient hereunder in respect thereof (whether of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrower will promptly pay such Lender or other Recipient, as the case may be, any additional amount or amounts necessary to compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case (i) and (ii) be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than six (6) months prior to the date that such Lender notifies the Borrower of the change in the Requirement of Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such six (6) month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

## 2.20 Taxes.

For purposes of this Section 2.20, the term “Lender” includes the Issuing Lender and the term “applicable law” includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Requirements of Law, and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Indemnified Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such

Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), a U.S. Tax Compliance Certificate

substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.20(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.20(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.20(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.



(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the Discharge of Obligations.

**2.21 Indemnity.** In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.23 or (e) any failure of the Borrower to make any payment of any drawing under any Letter of Credit (or interest due thereon) denominated in a Foreign Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds or from any fees payable. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

**2.22 Change of Lending Office.** Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.19 or 2.20, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender; provided that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

**2.23 Substitution of Lenders.** Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (c) below being referred to as an "**Affected Lender**" hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19(b) or Section 2.19(c) (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender's Loans and Commitment; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment (the replacing Lender or lender in (i) or (ii) being a "**Replacement Lender**"); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any

Affected Lender's Loan and/or Commitment (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any SOFR Loans then outstanding; and provided further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clauses (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

## **2.24 Defaulting Lenders.**

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definitions of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether optional or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Deposit Account and released pro rata to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, Issuing Lender or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, Issuing Lender or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result

of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each Non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each Non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that the aggregate obligations of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans of that Lender plus the aggregate Dollar Equivalent amount of that Lender's L/C Percentage of then outstanding Letters of Credit, plus the aggregate amount of such Lender's pro rata percentage of the then outstanding Swingline Loans. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages, L/C Percentages, and Term Loan Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

## **2.25 Joint and Several Liability of the Borrowers.**

If, at any time there is more than one Person composing the Borrower:

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.25), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations.

(d) The Obligations of each Borrower under the provisions of this Section 2.25 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Loans made or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.25 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.25, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.25 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.25 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower, the Administrative Agent or any Lender.

(f) Each Borrower represents and warrants to the Administrative Agent and Lenders that such Borrower is currently informed of the financial condition of the Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to the Administrative Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of the Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses (i) arising out of an election of remedies by the Administrative Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Borrower's rights of subrogation and reimbursement against any applicable Loan Party by the operation of Section 580 or 726 of the California Code of Civil Procedure or otherwise, and (ii) relating to any suretyship defenses available to it under the Uniform Commercial Code or any other applicable law, including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil Code Sections 1432, 2787 through 2855, 2899 and 3433.

(h) Each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property at any time. This means, among other things:

(i) The Administrative Agent and Lenders may collect from such Borrower without first foreclosing on any real or personal property Collateral pledged by the Borrowers.

(ii) If the Administrative Agent or any Lender forecloses on any Collateral consisting of real property pledged by the Borrowers:

(A) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) The Administrative Agent and Lenders may collect from such Borrower even if the Administrative Agent or Lenders, by foreclosing on real property, has destroyed any right such Borrower may have to collect from the other Borrowers.

This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(i) The provisions of this Section 2.25 are made for the benefit of the Administrative Agent, the Lenders, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all the Borrowers as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, any Lender, any successor or any assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.25 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.25 will forthwith be reinstated in effect, as though such payment had not been made.

(j) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or Lenders with respect to any of the Obligations or any collateral security therefor until the Discharge of Obligations. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Administrative Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior Discharge of Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. Notwithstanding anything to the contrary contained in this Section 2.25, no Borrower shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "**Foreclosed Borrower**"), including after the Discharge of Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Capital Stock of such Foreclosed Borrower whether pursuant to the Security Documents or otherwise.

(k) Each Borrower hereby agrees that, after the occurrence and during the continuance of any Default or Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior Discharge of Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent, and such Borrower shall deliver any such amounts to the Administrative Agent for application to the Obligations in accordance with the terms of this Agreement.

(l) Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "**Accommodation Payment**"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each other Borrower in an amount, for each of such other Borrower, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "**Allocable Amount**" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(m) Each entity composing the Borrower and each other Loan Party hereby irrevocably appoints Appian Corporation as the borrowing agent and attorney-in-fact for all entities composing the Borrower and each other Loan Party (the "**Administrative Borrower**"), which appointment shall remain in full force and effect unless and until the Administrative Agent shall have received prior written notice signed by each entity composing the Borrower that such appointment has been revoked and that another entity composing the Borrower has been appointed Administrative Borrower. Each entity composing the Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Administrative Agent with all notices with respect to Loans and Letters of Credit obtained for the benefit of any entity composing the Borrower or any other Loan Party and all other notices and instructions under this Agreement and the other Loan Documents, and (b) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Loan Documents.

**2.26 Notes.** If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

## **2.27 Incremental Loans.**

(a) Term Loans. At any time commencing on the Closing Date until the Term Loan Maturity Date, provided no Default or Event of Default has occurred and is continuing and subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Revolving Commitments, not more than five (5) increases in the aggregate) to the Term Loan Commitment or the funding of a new Term Loan from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent and the Borrower for the purpose of financing Permitted Acquisitions, working capital and general corporate purposes (each, an "**Incremental Term Loan**"), in an aggregate amount for all such Incremental Term Loans and any Incremental Revolving Commitments, not to exceed \$200,000,000. Any Incremental Term Loan shall be in the amount of at least \$5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)) and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)).

(b) Revolving Loans. At any time during the Revolving Commitment Period, provided no Default or Event of Default has occurred and is continuing and subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Term Loans, not more than five (5) increases in the aggregate) to the Revolving Commitment (the "**Incremental Revolving**

**Commitment**”), in an aggregate amount not to exceed \$100,000,000; provided that, in no event shall the aggregate amount of Incremental Revolving Commitment plus the Incremental Term Loans exceed \$200,000,000). Any Incremental Revolving Commitment shall be in the amount of at least \$5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)) and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)).

(c) Lender Election to Increase; Prospective Lenders. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period (such period, the **“Election Period”**) within which each Lender is requested to respond (which Election Period shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders), and the Administrative Agent shall promptly thereafter notify each Lender of the Borrower’s request for such Lender to participate on a pro rata basis for such Incremental Term Loan and/or such Incremental Revolving Commitment and the Election Period during which each Lender is requested to respond to such Borrower request; provided that if such notice indicates that it is conditioned upon the occurrence of a specified event, such notice may be revoked if such event does not occur prior to the requested funding date. No Term Loan Lender shall be obligated to participate in any Incremental Term Loan, and no Revolving Lender shall be obligated to participate in any Incremental Revolving Commitment, and each such Lender’s determination to participate shall be in such Lender’s sole and absolute discretion. Any Lender not responding by the end of such Election Period shall be deemed to have declined to increase its respective Revolving Commitment or Term Loan Commitment, as applicable. To the extent sufficient Term Loan Lenders (or their Affiliates) or Revolving Lenders (or their Affiliates), as applicable, do not agree to provide an Incremental Term Loan or Incremental Revolving Commitment, as applicable, on terms acceptable to the Borrower, the Borrower may invite any prospective lender that satisfies the criteria of being an “Eligible Assignee” and is reasonably satisfactory to the Administrative Agent to become a Lender pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent in connection with the proposed Incremental Term Loan or Incremental Revolving Commitment, as applicable (provided that the joinder of any such “Lender” for the purpose of providing all or any portion of any such Incremental Term Loan or Incremental Revolving Commitment, as applicable, shall not require the consent of any other “Lender” (including any other “Lender” that is joining this Agreement to provide all or part of such Incremental Term Loan or Incremental Revolving Commitment, as applicable).

(d) Effective Date and Allocation. If the Total Revolving Commitments are increased or Incremental Term Loans are extended in accordance with this Section 2.27, the Administrative Agent and the Borrower shall determine the effective date (the **“Increase Effective Date”**) and the Administrative Agent shall determine the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable and the Increase Effective Date.

(e) Conditions Precedent to Incremental Facilities. Each of the following shall be the only conditions precedent to the making of an Incremental Term Loan or Incremental Revolving Commitment:

(i) The Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of each such Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Revolving Commitment or Incremental Term Loan, as applicable.

(ii) Each of the conditions precedent set forth in Section 5.2 shall be satisfied.

(iii) The Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof both as of the end of the most recently ended fiscal quarter in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof (or, prior to the fiscal quarter ending December 31, 2022, the financial covenant levels



required as of December 31, 2022) prior to the making of the Incremental Term Loan or Incremental Revolving Commitment and immediately after giving effect to the making of the Incremental Term Loan or Incremental Revolving Commitment on a pro forma basis (treating any Incremental Revolving Commitment as fully funded); *provided, however*, that notwithstanding the foregoing, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof after giving pro forma effect to such increase shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio (or, prior to the fiscal quarter ending December 31, 2022, the maximum ratio permitted for December 31, 2022) permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which the Incremental Term Loan or Incremental Revolving Commitment is funded in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis (treating any Incremental Revolving Commitment as fully funded); *provided further*, that if the Incremental Term Loan or Incremental Revolving Commitment is funded prior to the reporting for the fiscal quarter ending December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until the Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022.

(iv) The Borrower shall have delivered to the Administrative Agent a Compliance Certificate certifying as to compliance with the requirements of clauses (ii) and (iii) above, together with all reasonably detailed calculations evidencing compliance with clause (iii) above.

(v) The Borrower shall (x) deliver to any Lender providing Incremental Revolving Commitments or Incremental Term Loans, as applicable hereunder (or any new Lender providing such Incremental Revolving Commitments or Incremental Term Loans, as applicable hereunder) any Notes requested by such Lender in connection with the making of such increased or new Revolving Commitment or Incremental Term Loans, as applicable, and (y) have executed any amendments to this Agreement and the other Loan Documents as may be required by the Administrative Agent to effectuate the provisions of this Section 2.27, including, if applicable, any amendment that may be necessary to ensure and demonstrate that the Liens and security interests granted by the Loan Documents are perfected under the UCC or other applicable law to secure the Obligations in respect of the Incremental Term Loans and Incremental Revolving Commitment, as applicable.

(vi) The Borrower shall have paid to the Administrative Agent any fees required to be paid pursuant to the terms of the Fee Letter, and shall have paid to any Lender any fees required to be paid to such Lender in connection with the Incremental Revolving Commitment (or in the case of a new Lender, such new Revolving Commitment) or Incremental Term Loans, as applicable (or in the case of a new Lender, such new Term Loan Commitment or Incremental Term Loans) hereunder; *provided* that, if any new Lender providing an Incremental Revolving Commitment or Incremental Term Loans within six (6) months of the Closing Date is provided a fee for such Incremental Revolving Commitments or Incremental Term Loans that exceeds the fees provided to existing Lenders in respect of the Revolving Commitments and Term Loans extended by such Lender (the "*Existing Commitments*") on a percentage basis as to such Lender's Commitments, then Borrower shall pay each such existing Lender a supplemental fee on such Lender's Existing Commitments equal to the difference between the fee percentage paid to such new Lender and the fee percentage paid to such existing Lender.

(vii) With respect to any increase in the Revolving Commitment, the Borrower shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 2.11) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Percentages resulting from any non-ratable increase in the Revolving Commitments undertaken pursuant to this Section 2.27.

(f) Distribution of Revised Commitments Schedule. The Administrative Agent shall promptly distribute to the parties an amended Schedule 1.1A (which shall be deemed incorporated into

this Agreement), to reflect any such changes in the Revolving Commitments, Term Loan Commitments or outstanding Term Loans if applicable of the existing Lenders, or the addition of any new Lenders and their respective Revolving Commitment amounts, Term Loan Commitment amounts or outstanding Term Loans, as applicable, and the respective Revolving Percentages or Term Loan Percentages, as applicable, resulting therefrom.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or Section 10.1 to the contrary.

(h) Treatment of Incremental Facilities.

(i) Any Incremental Term Loans shall, for purposes of principal repayment and interest, be treated substantially the same as the Term Loans funded on the Closing Date, and shall be made on the same terms (including with respect to pricing, and maturity date) as, and made pursuant to the same documentation as, is applicable to, the original Term Loan Facility, and any additional Revolving Loans made available pursuant to any such Incremental Revolving Commitment shall be treated on the same terms (including with respect to pricing and maturity date) as, and made pursuant to the same documentation as is applicable to, the original Revolving Facility. Upon the funding of each Incremental Term Loan, the scheduled amortization payments set forth in Section 2.3 shall be recalculated and increased, commencing in the first full quarter after such Incremental Term Loan is funded, by aggregating the Term Loan made on the Closing Date with all Incremental Term Loans and multiplying such amount by the applicable percentage set forth in the table in Section 2.3, and such amended amortization schedule shall be effective commencing on the last day of the first full fiscal quarter after the Incremental Term Loan is funded.

(ii) The Incremental Term Loans and Incremental Revolving Commitments, as applicable, shall, for purposes of prepayments, be treated substantially the same as the Term Loans funded on the Closing Date and the initial Revolving Commitment, as applicable, and shall have the same terms as the Term Loans and the initial Revolving Facility, as applicable, except as may be mutually agreed among the Borrower, the Administrative Agent and the Required Lenders (or each Lender to the extent effectuating a change in treatment of the Loans that requires the consent of each Lender pursuant to Section 10.1(a)); provided, in any case, that (i) no Incremental Term Loan or Incremental Revolving Commitment, as applicable, shall have a final maturity date earlier than the Term Loan Maturity Date or the Revolving Termination Date, as applicable, (ii) the amortization schedule of any Incremental Term Loan shall not have a weighted average life to maturity shorter than the remaining weighted average life to maturity of the Term Loans funded on the Closing Date, and (iii) to the extent the yield (including any original issue discount or similar yield-related discounts, deductions or payments but excluding any customary arrangement fees payable to the Administrative Agent) applicable to the Incremental Term Loan or Incremental Revolving Commitment, as applicable, is higher than the yield applicable to the Term Loans funded on the Closing Date or the Revolving Facility by more than 0.50% (or, with respect to any Incremental Term Loan or Incremental Revolving Commitment provided within six (6) months of the Closing Date, by any amount), this Agreement shall be amended to increase the Applicable Margin applicable to the Term Loans funded on the Closing Date (or any subsequently funded Term Loans) and the Revolving Facility, as applicable, to the extent necessary so that the Applicable Margin on such Incremental Term Loan or the Incremental Revolving Commitment, as applicable, is no more than 0.50% greater (or, with respect to any Incremental Term Loan or Incremental Revolving Commitment provided within six (6) months of the Closing Date, is no greater than any amount greater) than the applicable margin on the Term Loans funded on the Closing Date (or any subsequently funded Term Loans) or the Revolving Facility, as applicable (the “**MFN Protection**”).

(i) Effect of Increase. Upon the increase in the Total Revolving Commitments or the extension of Incremental Term Loans, as applicable, under this Section 2.27, all references in this Agreement and in any other Loan Document (i) to the Revolving Commitment, Term Loan Commitment or Term Loans, as applicable, of any Lender shall be deemed to include any increase in such Lender’s Revolving Commitment, Term Loan Commitment or Term Loans, as applicable, pursuant to this Section 2.27, and (ii) to the Total Revolving Commitments shall be deemed to include the increase in the Total Revolving Commitments made pursuant to this Section 2.27; and (iii) to the aggregate amount of the Term Loan Commitments or Term Loans shall be deemed to include the increase in the aggregate

amount of the Term Loan Commitment made or Incremental Term Loans extended pursuant to this Section 2.27. The Revolving Loans, Revolving Commitments, and Total Revolving Commitments, Term Loans, and aggregate amount of the Total Term Loan Commitments that are subject to an increase under this Section 2.27 shall be entitled to all of the benefits afforded by this Agreement and the other Loan Documents and shall benefit equally and ratably from any guarantees and Liens provided under the Loan Documents in favor of the Secured Parties.

### SECTION 3 LETTERS OF CREDIT

#### 3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit ("**Letters of Credit**") for the account of the Borrower on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue (and shall not issue) any Letter of Credit if, after giving effect to such issuance, (x) the Dollar Equivalent L/C Exposure would exceed the Dollar Equivalent Total L/C Commitments, (y) the Dollar Equivalent of Available Revolving Commitment at such time would be less than zero, or (z) the Issuing Lender has been notified in writing at least one Business Day prior to the issuance thereof by the Borrower, the Administrative Agent or a Revolving Lender that the funding conditions set forth in Section 5.2 cannot be satisfied at such time (or otherwise has actual knowledge that such conditions cannot be satisfied at such time). Unless otherwise agreed to by the Administrative Agent and the applicable Issuing Lender in their sole discretion, each Letter of Credit shall (i) be denominated in Dollars (or Foreign Currency if agreed to by the Administrative Agent and the applicable Issuing Lender) and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above).

(b) The Issuing Lender shall not at any time be obligated to issue (and in the case of clause (iii) below shall not issue) any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied;

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than \$500,000; or

(vii) any Lender is at that time a Defaulting Lender, unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

**3.2 Procedure for Issuance of Letters of Credit.** The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

### **3.3 Fees and Other Charges.**

(a) The Borrower agrees to pay, with respect to each Existing Letter of Credit and each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily Dollar Equivalent amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a "**Letter of Credit Fronting Fee**"), (ii) a letter of credit fee of equal to the Applicable Margin relating to SOFR Loans multiplied by the daily Dollar Equivalent amount available to be drawn under each such Letter of Credit on the drawable Dollar Equivalent amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a "**Letter of Credit Fee**"), in each case payable quarterly in arrears on the first (1<sup>st</sup>) Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an "**L/C Fee Payment Date**") after the issuance date of such Letter of Credit, and (iii) the Issuing Lender's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) the Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the "**Issuing Lender Fees**"). All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. For purposes of computing the Dollar Equivalent of the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.5.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such fee, if any, payable to the Issuing Lender for its own account.

(e) All fees payable under this Section 3.3 shall be fully earned on the date paid and nonrefundable.

### **3.4 L/C Participations; Existing Letters of Credit.**

(a) **L/C Participations.** The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender's own account and risk an undivided interest equal to such L/C Lender's L/C Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) **Existing Letters of Credit.** On and after the Closing Date, the Existing Letters of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to Sections 3.3(a) and (b), reimbursement of costs and expenses to the extent provided herein and for purposes of being secured by the Collateral, a Letter of Credit outstanding under this Agreement and entitled to the benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement (which shall control in the event of a conflict).

### **3.5 Reimbursement.**

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than the immediately following Business Day. In the case of a Letter of Credit denominated in a Foreign Currency, the Borrower shall reimburse the Issuing Lender in such Foreign Currency, unless (A) the Issuing Lender (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the Issuing Lender promptly following receipt of the notice of drawing that the Borrower will reimburse the Issuing Lender in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in a Foreign Currency, the Issuing Lender shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. In the event that a drawing denominated in a Foreign Currency is to be reimbursed in Dollars and the Dollar amount paid by the Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Foreign Currency equal to the drawing, the Borrower agrees, as a separate and independent obligation, to indemnify the Issuing Lender for the loss resulting from its inability on that date to purchase the Foreign

Currency in the full amount of the drawing. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Same Day Funds; provided that the Borrower may, subject to the satisfaction of the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in a Foreign Currency) (and the Administrative Agent may apply Cash Collateral provided for this purpose); upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a "**Revolving Loan Conversion**"), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

**3.6 Obligations Absolute.** The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (a) the issuance of any Letter of Credit, or (b) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing

Lender or such L/C Lender (as determined by a court of competent jurisdiction by a final nonappealable judgment).

**3.7 Letter of Credit Payments.** If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

**3.8 Applications.** To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

**3.9 Interim Interest.** If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the Dollar Equivalent of the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

### **3.10 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan or Swingline Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% of such L/C Exposure (110% in the case of any Letter of Credit in a currency other than Dollars).

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv)) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents including any applicable Cash Management Agreement.

**3.11 Additional Issuing Lenders.** The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an Issuing Lender under the terms of this Agreement. Any Lender designated as an Issuing Lender pursuant to this paragraph shall be deemed to be an “**Issuing Lender**” (in addition to being a Lender) in respect of Letters of Credit issued or to be issued by such Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Lender and such Lender.

**3.12 Resignation of the Issuing Lender.** The Issuing Lender may resign at any time by giving at least thirty (30) days’ prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

**3.13 Applicability of UCP and ISP.** Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to with respect to (a) standby Letters of Credit, the rules of the ISP, and (b) with respect to commercial Letters of Credit, the rules of the Uniform Customs and Practice for Documentary Credits, as published in its most recent version by the International Chamber of Commerce on the date any commercial Letter of Credit is issued.



## SECTION 4 REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans and issue the Letters of Credit, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to itself and each other Group Member, that:

### 4.1 Financial Condition.

(a) The Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Financial Statements have been prepared based on the best information available to the Borrower as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Group Members as of June 30, 2022 assuming that the events specified in the preceding sentence had actually occurred at such date.

(b) The audited consolidated balance sheets of the Group Members as of December 31, 2019, December 31, 2020, and December 31, 2021, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from BDO USA, LLP, present fairly in all material respects the consolidated financial condition of the Group Members as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of the Group Members as at June 30, 2022, and the related unaudited consolidated statements of income and cash flows for the six (6) month period ended on such date, present fairly in all material respects the consolidated financial condition of the Group Members as at such date, and the consolidated results of its operations and its consolidated cash flows for the six (6) month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein and subject to, in the case of unaudited financial statements normal year-end adjustments and absence of footnotes). No Group Member has, as of the Closing Date, any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2021 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

**4.2 No Change.** Since December 31, 2021, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

**4.3 Existence; Compliance with Law.** Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing (if applicable) under the laws of each jurisdiction where the failure to be so qualified or in good standing could reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**4.4 Power, Authorization; Enforceable Obligations.** Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan

Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No material Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described on Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect, and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution and delivery will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the extensions of credit hereunder and the use of the proceeds thereof will not violate any material Requirement of Law (except as set forth on Schedule 4.5) or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Group Member has violated any Requirement of Law or violated or failed to comply with any Contractual Obligation applicable to the Group Members that could reasonably be expected to have a Material Adverse Effect. The absence of obtaining the Governmental Approvals described on Schedule 4.5 and the violations of Requirements of Law referenced on Schedule 4.5 shall not have an adverse effect on any rights of the Lenders or the Administrative Agent pursuant to the Loan Documents.

**4.6 Litigation.** Except as disclosed on Schedule 4.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened, by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

**4.7 No Default.** No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either immediately result from the making of a requested credit extension.

**4.8 Ownership of Property; Liens; Investments.** Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property material to the Group Member's business, and none of such property is subject to any Lien except as permitted by Section 7.3. No Loan Party owns any Investment except as permitted by Section 7.7. Section 10 of the Collateral Information Certificate sets forth a complete and accurate list of all real property owned by each Loan Party as of the Closing Date, if any. The Collateral Information Certificate sets forth a complete and accurate list of all leased real property under which any Loan Party is the lessee as of the Closing Date.

**4.9 Intellectual Property.** Each Group Member owns, or is licensed, or otherwise has the right, to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To the knowledge of any Group Member, no claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any Group Member's Intellectual Property, nor does any Group Member know of any valid basis for any such claim, unless such claim could not reasonably be expected to have a Material Adverse Effect. The use of Intellectual Property by each Group Member, and the conduct of such Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement or violation could not reasonably be expected to have a Material

Adverse Effect, and there are no claims pending or, to the knowledge of any Loan Party, threatened in writing to such effect.

**4.10 Taxes.** Each Group Member has filed or caused to be filed all Federal, state and other material tax returns that are required to be filed (taking into account all applicable extension periods) and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any taxes, charges or assessments the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member or where the amount is less than \$250,000 in the aggregate); no tax Lien has been filed, and, to the knowledge of the Loan Parties, no claim is being asserted, with respect to any such tax, fee or other charge.

**4.11 Federal Regulations.** The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of “buying” or “carrying” “margin stock” (within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect) or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for buying or carrying any such margin stock or for extending credit to others for the purpose of purchasing or carrying margin stock in violation of Regulations T, U or X of the Board. As of the Closing Date, no Loan Party owns any margin stock. If any margin stock directly or indirectly constitutes Collateral securing the Obligations, the Borrower shall promptly notify the Administrative Agent and Lenders and, if requested in writing by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

**4.12 Labor Matters.** Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Group Members, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

#### **4.13 ERISA.**

(a) Schedule 4.13 sets forth a complete and accurate list of all Pension Plans maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes as of the Closing Date;

(b) the Borrower and its ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Plan, and have performed all their obligations under each Plan;

(c) no ERISA Event has occurred or is reasonably expected to occur;

(d) the Borrower and each of its ERISA Affiliates have met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(e) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date;

(f) except to the extent required under Section 4980B of the Code, or as described on Schedule 4.13, no Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any of its ERISA Affiliates;

(g) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$5,000,000;

(h) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(i) all liabilities under each Plan are (i) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing the Plans, (ii) insured with a reputable insurance company, (iii) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (iv) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto;

(j) to the knowledge of the Loan Parties, there are no circumstances which may give rise to a liability in relation to any Plan which is not funded, insured, provided for, recognized or estimated in the manner described in clause (g); and

(k) (i) the Borrower is not and will not be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the assets of the Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) the Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to governmental plans.

**4.14 Investment Company Act; Other Regulations.** No Loan Party is an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended. Except as set forth on Schedule 4.5, no Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

#### **4.15 Subsidiaries.**

(a) Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than equity granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of any Group Member, except as may be created by the Loan Documents.

(b) As of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.1(b), no Subsidiary which has been designated as an Excluded Foreign Subsidiary fails to satisfy the limitations set forth in the definition thereof.

**4.16 Use of Proceeds.** The proceeds of the Term Loans and the Revolving Loans shall be used to refinance the obligations of the Borrower outstanding under the Existing SVB Credit Facility, to pay related fees and expenses and for general corporate purposes and working capital. The proceeds of any Incremental Term Loan shall be used to finance Permitted Acquisitions; provided that, for the first \$60,000,000 of Incremental Term Loans funded pursuant to Section 2.27 after the Closing Date, such

Incremental Term Loans may also be used for general corporate purposes and working capital. All or a portion of the proceeds of the Revolving Loans, Swingline Loans, and the Letters of Credit, shall be used for general corporate purposes and working capital.

**4.17 Environmental Matters.** Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) except as disclosed on Schedule 4.17, the facilities and properties owned, leased or operated by any Group Member (the “**Properties**”) do not contain, and to the knowledge of the Loan Parties, have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could reasonably be expected to give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “**Business**”), nor does any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of any Loan Party, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(f) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as set forth on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability of any other Person under Environmental Laws.

**4.18 Accuracy of Information, etc.** No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such projections and financial information as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such projections and financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that

could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

#### **4.19 Security Documents.**

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Guarantee and Collateral Agreement that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction (“**Certificated Securities**”), when certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the offices specified on Schedule 4.19(a), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3). As of the Closing Date, none of the Capital Stock of any Group Members that is a limited liability company or partnership has any Capital Stock that is a Certificated Security.

(b) Each of the Mortgages delivered after the Closing Date will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

**4.20 Solvency; Voidable Transaction.** The Group Member are, taken as a whole, and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, will be, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

**4.21 Regulation H.** No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

**4.22 Designated Senior Indebtedness.** The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

#### **4.23 Data Security and Privacy.**

(a) Each Group Member is, and at all times, has been, in compliance in all material respects with (i) all applicable Data Protection Laws, including, to the extent applicable, but not limited to the GDPR and those relating to cross-border transfers; (ii) all applicable contractual obligations of each Loan Party and its Subsidiaries concerning data privacy and security relating to Personal Data in the possession or control of any Group Member or maintained by third parties on behalf of such Group Member and having access to such information under contracts (or portions thereof) to which a Group Member is a party; and (iii) all applicable data transfer agreements and data processing agreements,

including the EU standard contractual clauses, to which a Group Member is a party (collectively, “*Privacy Agreements*”):

(b) Each Group Member is, and has been, in compliance in all material respects with all applicable prior and current written internal and public-facing privacy policies and notices of the Group Members regarding the collection, retention, use, processing, disclosure and distribution of Personal Data by the Group Members or their respective agents (collectively, the “*Privacy Policies*”), and the Privacy Policies have been maintained to be consistent in all material respects with the actual practices of each Group Member. The Privacy Policies contemplate the Group Members’ current uses of the Personal Data, and to the extent required under applicable Data Protection Laws, each Group Member has sought and obtained the appropriate consent from the applicable data subject for such uses. The Privacy Policies have made all material disclosures to users, customers, employees, or other individuals required by Data Protection Laws.

(c) Each Group Member has implemented and maintains a commercially reasonable security program (“*Security Program*”) that (i) complies in all material respects with all applicable Data Protection Laws, applicable Privacy Policies, and applicable Privacy Agreements, and (ii) includes commercially reasonable administrative, technical, organization, and physical security procedures and measures designed to preserve the security and integrity of all Personal Data and any other sensitive or confidential information or data related to each Group Member (collectively, “*Company Sensitive Information*”) in such Group Member’s possession or control and to protect such Company Sensitive Information against unauthorized or unlawful processing, access, acquisition, use, theft, interruption, modification, disclosure, loss, destruction or damage.

(d) Except as disclosed on Schedule 4.23(d), there has been (i) no actual, suspected or alleged (in writing) incidents of unauthorized access, use, intrusion, disclosure or breach of the security of any information technology systems owned or controlled by a Group Member or any of their contractors and used by such contractors on behalf of a Group Member, and (ii) no actual, suspected or alleged (in writing) incidents of unauthorized acquisition, destruction, damage, disclosure, loss, corruption, alteration, or use of any Company Sensitive Information, in each case that could reasonably be expected to cause a Material Adverse Effect.

(e) Each Group Member has a valid and legal right (whether contractually, by applicable law or otherwise) to access or use all Personal Data that is accessed and used by or on behalf of a Group Member in connection with the sale, use and/or operation of their products, services and businesses.

(f) Except as would not reasonably be expected to have a Material Adverse Effect, there is no pending or to the knowledge of any Loan Party, threatened in writing, complaints, claims, demands, inquiries, proceedings, or other notices, including any notices of any investigation or other legal proceedings, regarding a Group Member, initiated by (i) any Governmental Authority, including the United States Federal Trade Commission, a state attorney general, data protection authority or similar state official, or a supervisory authority; (ii) any counterparty to, or subject of, a Privacy Agreement; or (iii) any self-regulatory authority or entity, alleging that any activity of a Group Member: (1) is in violation of any applicable Data Protection Laws, (2) is in violation of any Privacy Agreements, (3) is in violation of any Privacy Policies or (4) is otherwise in violation of any person’s privacy, personal or confidentiality rights.

**4.24 Insurance.** All insurance maintained by the Loan Parties is in full force and effect, all premiums (other than premiums financed in compliance with Section 7.2) have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance. Each Loan Party maintains insurance with financially sound and reputable insurance companies on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability, and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

**4.25 No Casualty.** No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of its property.

**4.26 Sanctions.** No Loan Party nor any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries or to the knowledge of any Loan Party or any of its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof (a) is a Sanctioned Person or Sanctioned Entity, (b) has any assets located in Sanctioned Persons or Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Group Members has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions and Anti-Money Laundering Laws. Each of the Group Members, and to the knowledge of each such Group Member, each director, officer, employee, agent and Affiliate of each such Group Member, is in compliance with all Sanctions and Anti-Money Laundering Laws. No proceeds of any Loan made hereunder or any Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, anticorruption laws or Anti-Money Laundering Laws by any Person.

**4.27 Capitalization.** Schedule 4.27 sets forth the beneficial owners of all Capital Stock of the Borrower and its consolidated Subsidiaries, and the amount of Capital Stock held by each such owner, as of the Closing Date.

**4.28 OFAC.** No Group Member, nor, to the knowledge of the Borrower or any such Group Member, any director, officer, employee, agent, affiliate or representative thereof, is a Sanctioned Person.

**4.29 Anti-Corruption Laws.** Each Group Member has conducted its businesses in compliance in all material respects with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**4.30 [Reserved].**

**4.31 Representations as to Foreign Obligors.**

(a) Each Foreign Obligor is subject to civil and commercial Requirements of Law with respect to its Obligations under, as applicable, this Agreement and the other Loan Documents to which it is a party (collectively, as to each such Foreign Obligor, the “*Applicable Foreign Obligor Documents*”), and the execution, delivery and performance by each such Foreign Obligor of the Applicable Foreign Obligor Documents to which it is party constitute and will constitute private and commercial acts and not public or governmental acts. No such Foreign Obligor nor any of its respective property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its Obligations under the Applicable Foreign Obligor Documents to which it is party.

(b) Each of the Applicable Foreign Obligor Documents are in proper legal form under the respective Requirements of Law of the jurisdiction in which the applicable Foreign Obligor party to such Applicable Foreign Obligor Documents is organized and existing (i) for the enforcement thereof against such Foreign Obligor under such Requirements of Law, and (ii) to ensure the legality, validity, enforceability, priority or admissibility in evidence thereof. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of any such Applicable Foreign Obligor Documents that such Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which the applicable Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of any such Applicable Foreign Obligor Documents or any other document, except for (x) any such filing, registration, recording, execution or notarization that has been made or that is not required to be made until such Applicable Foreign Obligor Document or any such other document is sought to be enforced, and (y) any charge or tax as has been timely paid.



(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which any Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents to which any such Foreign Obligor is party, or (ii) on any payment to be made by any such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents to which it is party, except as has been disclosed to the Administrative Agent.

## SECTION 5 CONDITIONS PRECEDENT

**5.1 Conditions to Closing Date.** The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction or waiver, prior to or concurrently with the making of such extension of credit on the Closing Date, of the following conditions precedent:

(a) Loan Documents. The Administrative Agent shall have received each of the following, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent:

- (i) this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 1.1A;
- (ii) the Collateral Information Certificate, executed by a Responsible Officer;
- (iii) if required by any Term Loan Lender, a Term Loan Note executed by the Borrower in favor of such Term Loan Lender;
- (iv) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;
- (v) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;
- (vi) the Guarantee and Collateral Agreement, executed and delivered by each Grantor named therein;
- (vii) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto; and
- (viii) that certain master intercompany note and allonge, executed by the Group Members, in form and substance reasonably acceptable to the Administrative Agent.

(b) [Reserved].

(c) Pro Forma Financial Statements; Financial Statements; Projections. The Administrative Agent shall have received (i) the Pro Forma Financial Statements, and (ii) the financial statements of the Group Members referenced in Section 4.1(b).

(d) Approvals. All Government Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents, the continuing operations of the Group Members, and the consummation of the transactions contemplated hereby, shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that could reasonably be expected to restrain, prevent or otherwise impose burdensome conditions on the financing contemplated hereby. The absence of obtaining the Governmental Approvals described on Schedule 4.5 shall not have an adverse effect on

any rights of the Lenders, the Administrative Agent pursuant to the Loan Documents or an adverse effect on the Group Members with regard to their continuing operations.

(e) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (A) the Operating Documents of such Loan Party certified, in the case of formation documents, as of a recent date by the secretary of state or similar official of the relevant jurisdiction of organization of such Loan Party, (B) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (C) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (ii) a long form good standing certificate for each Loan Party from its respective jurisdiction of organization, and (iii) a certificate of foreign qualification from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect.

(f) Responsible Officer's Certificates. The Administrative Agent shall have received a certificate signed by a Responsible Officer, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (d) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2021, that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(g) Patriot Act, etc. The Administrative Agent and each Lender shall have received, to the extent requested at least two (2) Business Days prior to the Closing Date, all documentation and other information requested to comply with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation (including the Beneficial Ownership Certification), and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(h) [Reserved].

(i) [Reserved].

(j) Existing Credit Facility, Etc. All obligations of the Group Members in respect of the Existing SVB Credit Facility shall substantially contemporaneously with the funding of the Loan proceeds on the Closing Date have been paid in full.

(k) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien, judgment and litigation searches reasonably required by the Administrative Agent, and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, or Liens to be discharged on or prior to the Closing Date pursuant to the payoff letter and other documentation satisfactory to the Administrative Agent.

(ii) Pledged Stock; Stock Powers; Pledged Notes. Other than as agreed to by the Administrative Agent in its reasonable discretion or as subject to Section 5.3 below, the Administrative Agent shall have received each promissory note (if any) pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement or other applicable Security Document, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Intellectual Property Security Agreements, Deposit Account Control Agreements, Securities Account Control Agreements, and landlord access agreements and/or

bailee waivers) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create in favor of the Administrative Agent (for the benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed and delivered to the Administrative Agent or, as applicable, be in proper form for filing, registration or recordation.

(l) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent.

(m) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent) for payment on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Closing Date.

(n) Legal Opinions. The Administrative Agent shall have received the executed legal opinion of (i) Davis Polk & Wardwell LLP, New York counsel to the Loan Parties, and (ii) Morris, Nichols, Arsht & Tunnell LLP, Delaware counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent.

(o) Foreign Cash on Deposit. The Borrower shall have delivered calculations or statements evidencing the average balance of the aggregate amount of unrestricted cash held in accounts owned or maintained by Group Members with banking institutions which are not Lenders or the Affiliates of a Lender for the month ended immediately prior to the Closing Date does not exceed \$25,000,000.

(p) Borrowing Notices. The Administrative Agent shall have received, (i) in respect of the Term Loan to be made on or about the Closing Date, a completed Notice of Borrowing, attaching a funds flow, executed by the Borrower and otherwise complying with the requirements of Section 2.2, and (ii) in respect of any Revolving Loans to be made on or about the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.5.

(q) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(r) No Material Adverse Effect. There shall not have occurred since December 31, 2021 any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(s) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, that could reasonably be expected to have a Material Adverse Effect.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying such Lender's objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Closing Date or, if any extension of credit on the Closing Date has been requested, such Lender shall not have made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage or Term Loan Percentage, as the case may be, of such requested extension of credit.

**5.2 Conditions to Each Extension of Credit.** The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects (or all respects, as applicable) as of such earlier date.

(b) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 shall be complied with.

(c) Notices of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

(d) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder, each Revolving Loan Conversion and each conversion of a Term Loan shall constitute a representation and warranty by the Borrower as of the date of such extension of credit, Revolving Loan Conversion or conversion of a Term Loan, as applicable, that the conditions contained in this Section 5.2 have been satisfied.

**5.3 Post-Closing Conditions Subsequent.** The Borrower shall satisfy each of the conditions subsequent to the Closing Date specified in this Section 5.3 to the reasonable satisfaction of the Administrative Agent, in each case, by no later than the date specified for such condition below (or such later date as the Administrative Agent shall agree in its reasonable discretion):

(a) The Administrative Agent shall have completed a satisfactory initial collateral audit on or before the ninetieth (90<sup>th</sup>) day after the Closing Date.

(b) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring thirty (30) days after the Closing Date, the Appian UK Stock Pledge Agreement.

(c) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date insurance endorsements, in form and substance reasonably satisfactory to the Administrative Agent;

(d) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date evidence of the termination of any Lien in favor of ePlus Group, Inc., in form and substance reasonably satisfactory to the Administrative Agent;

(e) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring sixty (60) days after the Closing Date the stock certificate of Appian UK, representing 100% of the issued and outstanding (voting and non-voting) Capital Stock of Appian UK together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent;

(f) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring thirty (30) days after the Closing Date a certificate of foreign qualification from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect;

(g) The Borrower shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date a landlord waiver with respect to the Borrower's headquarters, in form and substance reasonably satisfactory to the Administrative Agent; and

(h) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring sixty (60) days after the Closing Date, a Securities Account Control Agreement with respect to that certain account number [] maintained with SVB, in each case in form and substance reasonably satisfactory to the Administrative Agent.

## SECTION 6 AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall, and, where applicable, shall cause each of its Subsidiaries to:

### 6.1 Financial Statements. Furnish to the Administrative Agent for distribution to each Lender:

(a) as soon as available, but in any event prior to the earlier of (x) five (5) days after the date they are required by the SEC and (y) ninety (90) days after the end of each fiscal year of the Borrower, a copy of the audited consolidated and consolidating balance sheet of the Group Members as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by BDO USA, LLP or other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent; and

(b) as soon as available, but in any event prior to the earlier of (x) five (5) days after the date they are required by the SEC and (y) forty-five (45) days after the end of each fiscal quarterly period of each fiscal year of the Borrower (commencing with the quarterly period ended September 30, 2022, provided that a Compliance Certificate shall not be required to be delivered for such period), (i) the unaudited consolidated and consolidating balance sheet of the Group Members as at the end of such fiscal quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and absence of footnotes) and (ii)(1) a reasonably detailed calculation of gross and net dollar retention, and (2) a reasonably detailed logo churn/ calculations, each in a form reasonably acceptable to the Administrative Agent, or to the extent previously approved by the Administrative Agent, consistent with past practice.

All such financial statements shall be complete and correct in all material respects (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of year-end audit footnotes) and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

Additionally, documents required to be delivered pursuant to this Section 6.1 and Section 6.2(e) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Borrower posts such documents, or provides a link thereto, either: (i) on the Borrower's website on the Internet at the website address listed in Section 10.2; or (ii) when such documents are posted electronically on the Borrower's behalf on an internet or intranet website to which each Lender and the

Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any; provided that: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until written request to cease delivering paper copies is given by the Administrative Agent or such Lender; and (B) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by email electronic versions (*i.e.* soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

**6.2 Certificates; Reports; Other Information.** Furnish to the Administrative Agent, for distribution to each Lender (or, in the case of clause (j), to the Administrative Agent and such relevant Lender):

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, a Compliance Certificate of a Responsible Officer stating (t) to the best of such Responsible Officer's knowledge, whether a Default or Event of Default has occurred, and if a Default or Events of Default has occurred, specifying the details thereof any action taken or proposed to be taken with respect thereto, (u) reasonably detailed information and calculations demonstrating compliance with the covenants set forth in Section 7.1 as of the last day of the fiscal quarter or fiscal year of the Borrower, as the case may be, (v) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party since the date of the most recent report delivered pursuant to this clause (v) (or, in the case of the first such report so delivered, since the Closing Date), (w) calculations or statements evidencing the average balance of the aggregate amount of unrestricted cash held in accounts owned or maintained by Group Members (broken out by Group Member) in non-U.S. banking institutions for the prior fiscal quarter or year, as the case may be, (x) a calculation as to the (1) consolidated total assets and (2) consolidated total revenues held by each Excluded Foreign Subsidiary as of such date (in each case as determined in accordance with GAAP), (y) a completed "Covenant Support and KPIs" worksheet; and (z) solely in connection with delivery of any financial statements pursuant to Section 6.1(a), to the extent not previously delivered in such fiscal year, current insurance certificates and to the extent not previously disclosed to the Administrative Agent, a list of any Intellectual Property issued to, applied for or acquired by any Loan Party during such fiscal year.

(c) as soon as available, and in any event no later than forty-five (45) days after the end of each fiscal year of the Borrower and concurrently with any updates thereto, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Group Members as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount;

(d) promptly, and in any event within five (5) Business Days after receipt thereof by any Group Member, copies of each material notice or other material correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Group Member (other than routine comment letters from the staff of the SEC relating to the Borrower's filings with the SEC);

(e) within five (5) Business Days after the same are sent, copies of each annual report, proxy or financial statement or other material report that any Group Member sends to the holders of any class of its Indebtedness or public equity securities and, within five (5) Business Days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which any Group Member may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) upon the reasonable request by the Administrative Agent, within five (5) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Group Members;

(g) [reserved];

(h) [reserved];

(i) [reserved]; and

(j) promptly, such additional financial and other information, including, without limitation, any certification or other evidence confirming Borrower's compliance with the terms of this Agreement, as the Administrative Agent or any Lender may from time to time reasonably request.

### 6.3 [Reserved].

**6.4 Payment of Obligations.** Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.

**6.5 Maintenance of Existence; Compliance.** (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect: (1) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Plan are and continue to be promptly paid at no less than the rates required under the rules of such Plan and in accordance with the most recent actuarial advice received in relation to such Plan and applicable law.

**6.6 Maintenance of Property; Insurance.** (a) Keep all material property necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business and shall provide to the Administrative Agent, insurance certificates and accompanying endorsements naming the Administrative Agent (for the benefit of the Secured Parties) as an “additional insured” or “lender loss payee,” as applicable, with respect to such insurance policies of the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent, and (c) maintain flood insurance on all real property subject to a Mortgage as required under Section 6.12(b).

**6.7 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives and independent contractors of the Administrative Agent and any Lender, upon at least three (3) Business Days’ prior written notice (provided, that no prior notice is required if an Event of Default has occurred and is continuing) to visit and inspect any of its properties during normal business hours and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants in the presence of an officer of the Borrower and to inspect the Collateral; provided that (i) such visits shall not be undertaken more frequently than once every 12 months unless an Event of Default has occurred and is continuing, and (ii) nothing in this Section 6.7 shall require any Group Member to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (x) in respect of which disclosure is prohibited by applicable law or any binding agreement so long as such binding agreement was not entered into in contemplation of preventing such disclosure, inspection or examination or (z) that is subject to attorney-client or similar privilege or constitutes attorney work-product (in each case, to the extent not created in contemplation of such Group Member’s obligations hereunder).

**6.8 Notices.** Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) following a Responsible Officer of any Loan Party becoming aware of any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) following a Responsible Officer of any Loan Party becoming aware of any litigation or proceeding affecting any Group Member (i) in which the amount involved is \$5,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member and which, if granted, could reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(d) (i) promptly after the Borrower has knowledge or becomes aware of the occurrence of any of the following ERISA Events affecting the Borrower or any ERISA Affiliate (but in no event more than twenty (20) days after such event), the occurrence of any of the following ERISA Events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any ERISA Affiliate with respect to such event: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Plan that is subject to Title IV of ERISA or Section 412 of the Code; and



(ii) (A) promptly after the giving, sending or filing thereof, or the receipt thereof, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Pension Plan, (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event, and (3) copies of such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request; and (B), without limiting the generality of the foregoing, such certifications or other evidence of compliance with the provisions of Sections 4.13 and 7.7 as any Lender (through the Administrative Agent) may from time to time reasonably request;

(e) [reserved];

(f) any material change in accounting policies or financial reporting practices by any Loan Party;

(g) [reserved];

(h) any changes to the beneficial ownership information set forth in item 37 of the Collateral Information Certificate. The Loan Parties understand and acknowledge that the Secured Parties rely on such true, accurate and up-to-date beneficial ownership information to meet their regulatory obligations to obtain, verify and record information about the beneficial owners of their legal entity customers; and

(i) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

#### **6.9 Environmental Laws.**

(a) Except as could not reasonably be expected to result in a Material Adverse Effect, comply in all material respects with, and ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Except as could not reasonably be expected to result in a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

**6.10 Operating Accounts.** On or before the date which is sixty (60) days following the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion, which approval may be by e-mail), except as otherwise agreed to by the Administrative Agent and except for Excluded Accounts, maintain the Group Members' primary domestic depository and operating accounts and securities accounts with SVB, the other Lenders or each of their Affiliates; provided that, (X) for Deposit Accounts maintained in the United States with (i) any banking institution (other than SVB), such Deposit Accounts are subject to Control Agreements, (ii) one of SVB's Affiliates Control Agreements may be required in the Administrative Agent's reasonable discretion, (Y) Securities Accounts are subject to a Control Agreement unless such Securities Accounts are maintained with SVB and (Z) the Group Members shall not maintain more than (i) \$25,000,000 at any one time in accounts for the benefit of any Foreign Subsidiaries maintained outside the United States with banking institutions which are not Lenders or the Affiliates of a Lender and (ii) \$15,000,000 at any one time in accounts for the benefit of any Foreign Subsidiaries maintained outside the United States with Lenders or Affiliates of a Lender and (iii) \$3,000,000 at any one time in accounts maintained in Canada by the Borrower at Bank of Montreal;

provided, it is agreed and understood that the Loan Parties shall have until the date that is ninety (90) days following the closing date of any Permitted Acquisition, permitted Investment or creation of any new Deposit Accounts or Securities Accounts, as applicable (or such later date as may be agreed to by Administrative Agent in its sole discretion) to comply with the provisions of this Section 6.10 with regard to such accounts (other than Excluded Accounts) of the Loan Parties acquired in connection with such Permitted Acquisition or permitted Investment or created by such Loan Party, as applicable.

**6.11 Audits.** At reasonable times, on three (3) Business Days' notice (provided that no notice is required if an Event of Default has occurred and is continuing), the Administrative Agent, or its agents, shall have the right to inspect the Collateral and the right to audit and copy any and all of any Loan Party's books and records including ledgers, federal and state tax returns, records regarding assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information. The foregoing inspections and audits shall be at the Borrower's expense, and the charge therefor shall be \$1,000 per person per day (or such higher amount as shall represent the Administrative Agent's then-current standard charge for the same), plus reasonable out-of-pocket expenses. Such inspections and audits shall not be undertaken more frequently than once per year, unless an Event of Default has occurred and is continuing.

#### **6.12 Additional Collateral, Etc.**

(a) With respect to any property (to the extent included in the definition of Collateral and not constituting Excluded Assets (as defined in the Guarantee and Collateral Agreement)) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, and (y) any property subject to a Lien expressly permitted by Section 7.3(g)) as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within ten (10) Business Days or such longer period as the Administrative Agent shall agree in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the reasonable opinion of the Administrative Agent to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly (and in any event within sixty (60) days (or such longer time period as the Administrative Agent may agree in its sole discretion)) after such acquisition, to the extent requested by the Administrative Agent, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with title and extended coverage insurance covering such real property in an amount not in excess of the fair market value as reasonably estimated by the Borrower as well as a current ALTA survey thereof, together with a surveyor's certificate, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than five (5) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent (for delivery to each Lender) shall have received the following documents (collectively, the "**Flood Documents**"): (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**") and such other documents as any Lender may reasonably request to complete its flood due diligence, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (if applicable) ("**Loan Party Notice**") that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C)

documentation evidencing the applicable Loan Party's receipt of any such Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with all applicable laws and regulations reasonably satisfactory to the Administrative Agent and each Lender (any of the foregoing being "**Evidence of Flood Insurance**"). Notwithstanding anything contained herein to the contrary, no Mortgage will be executed and delivered until each Lender has confirmed to the Administrative Agent that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Revolving Commitments including the provision of any incremental credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans or (iii) the issuance, renewal or extension of Letters of Credit shall be subject to (and conditioned upon): (A) the prior delivery of all applicable Flood Documents with respect to such Mortgaged Properties as required by the Flood Laws and as otherwise reasonably required by the Lenders and (B) the Administrative Agent having received written confirmation from each Lenders that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements.

(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), or any new Subsidiary formed by Division or any Subsidiary no longer qualifying as an Excluded Foreign Subsidiary, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such Subsidiary that is owned directly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party and foreign law security documents, (iii) cause such Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; it being agreed that if such Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary. All information necessary for the Administrative Agent and the Lenders to complete their "know-your-customer" due diligence with respect to any such new Subsidiary shall be delivered prior to the joinder of any such new Subsidiary.

(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems reasonably necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall more than 66% of the total outstanding voting Capital Stock and 100% of the total outstanding non-voting Capital Stock of any such new Excluded Foreign Subsidiary be required to be so pledged unless such Foreign Subsidiary is joined as a Loan Party), (it being understood that notwithstanding the foregoing, 100% of all of the issued and outstanding (voting and non-voting) Capital Stock of Appian UK shall be pledged pursuant to the Appian

UK Stock Pledge Agreement, (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action (including, as applicable, the delivery of any foreign law pledge documents reasonably requested by the Administrative Agent) as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) At the request of the Administrative Agent, each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from the lessor of the headquarters of each Loan Party and each leased property or bailee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located with a value in excess of \$1,000,000, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

(f) Notwithstanding the foregoing, (i) in the case of Foreign Subsidiaries, all guarantees and security shall be subject to any applicable general mandatory statutory limitations, fraudulent preference, equitable subordination, foreign exchange laws or regulations (or analogous restrictions), transfer pricing or "thin capitalization" rules, earnings stripping, exchange control restrictions, applicable maintenance of capital, retention of title claims, employee consultation or approval requirements, corporate benefit, financial assistance, protection of liquidity, and similar laws, rules and regulations and customary guarantee limitation language in the relevant jurisdiction; provided that the relevant Group Member shall use commercially reasonable endeavors to overcome such limitations (including by way of debt pushdown or seeking requisite approvals), and (ii) Subsidiaries may be excluded from the guarantee requirements in circumstances where (1) the Borrower and the Administrative Agent reasonably agree that the cost or other consequence of providing such a guarantee is excessive in relation to the value afforded thereby or (2) in the case of Foreign Subsidiaries, such requirements would contravene any legal prohibition, could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties or result in a risk of personal or criminal liability on the part of any officer, director, member or manager of such Subsidiary; provided that the relevant Loan Party shall use commercially reasonable endeavors to overcome such limitations. As a result of the limitations in clause (i) above, the Administrative Agent may elect to waive the requirement to cause a Group Member to become a Guarantor hereunder and such Group Member shall not be a Loan Party for any purposes hereof.

**6.13 Use of Proceeds.** Use the proceeds of each credit extension only for the purposes specified in [Section 4.16](#).

**6.14 Designated Senior Indebtedness.** Cause the Loan Documents and all of the Obligations to be deemed "Designated Senior Indebtedness" or a similar concept thereto, if applicable, for purposes of any Indebtedness of the Loan Parties.

**6.15 Anti-Corruption Laws.** Each Group Member will comply (i) with all Sanctions and (ii) in all material respects with anti-corruption laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, anti-corruption Laws and Anti-Money Laundering Laws.

**6.16 Further Assurances.** Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent's Lien on the Collateral or to effect the purposes of this Agreement.

**SECTION 7  
NEGATIVE COVENANTS**

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly:

**7.1 Financial Covenants.**

(a) Until (and including) the Cash Flow Trigger Date

(i) Minimum Liquidity. Commencing on the Closing Date until the Cash Flow Trigger Date, permit Liquidity at any time and tested quarterly, to be less than Forty Million Dollars (\$40,000,000).

(ii) Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio. Commencing on the Closing Date and ending on the last day of the fiscal quarter ending on the Cash Flow Trigger Date, permit the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as at the last day of any fiscal quarter ending on the date set forth below to exceed the ratio set forth below opposite such period (provided, in addition, that at no time shall the Recurring Revenue for the quarter ended as of any date set forth below multiplied by four (4) be less than \$180,000,000):

Quarter Ending	Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio
December 31, 2022	1.00:1.00
March 31, 2023	1.00:1.00
June 30, 2023	1.00:1.00
September 30, 2023	1.00:1.00
December 31, 2023	0.90:1.00
March 31, 2024	0.90:1.00
June 30, 2024	0.90:1.00
September 30, 2024	0.90:1.00
December 31, 2024	0.80:1.00
March 31, 2025	0.80:1.00
June 30, 2025	0.80:1.00
September 30, 2025	0.80:1.00

(b) From and after the Cash Flow Trigger Date

(i) Minimum Consolidated Fixed Charge Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2025 and for each fiscal quarter thereafter, permit the Consolidated Fixed Charge Coverage Ratio of the Group Members, as at the last day of any trailing twelve month period to be less 1.25:1.00.

(ii) Maximum Consolidated Total Leverage Ratio. Commencing with the fiscal quarter ending December 31, 2025, permit the Consolidated Total Leverage Ratio as at the last day of any trailing twelve month period ending on the date set forth below to exceed the ratio set forth below opposite such quarter end:

<b>Fiscal Quarter Ending</b>	<b>Consolidated Total Leverage Ratio</b>
December 31, 2025	4.50:1.00
March 31, 2026	4.50:1.00
June 30, 2026	4.50:1.00
September 30, 2026	4.50:1.00
December 31, 2026	4.50:1.00
March 31, 2027 and each fiscal quarter thereafter	3.50:1.00

**7.2 Indebtedness.** Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document and under any Cash Management Agreement;

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party; (ii) any Group Member (which is not a Loan Party) owing to any other Group Member (which is not a Loan Party); (iii) any Group Member (which is not a Loan Party) owing to any Loan Party, which constitutes an Investment permitted by Section 7.7(f)(iii); provided, that, such Indebtedness owing from any Group Member (which is not a Loan Party) to a Loan Party shall be evidenced by a master promissory note and such promissory note shall be pledged as Collateral; and (iv) any Loan Party owing to any Group Member (which is not a Loan Party); provided that such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent;

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party; (iii) by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party) or (iv) of any Loan Party of the Indebtedness of any Group Member that is not a Loan Party, so long as the aggregate amount of such Guarantee Obligations is an Investment permitted by Section 7.7(f)(iii); provided that, in any case of clauses (i), (ii), (iii) or (iv), the underlying Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(e) Indebtedness (including, without limitation, Capital Lease Obligations and purchase money financing) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed \$5,000,000 at any one time outstanding and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(f) Surety Indebtedness, performance or appeal bonds, and any other Indebtedness in respect of letters of credit, banker's acceptances or similar arrangements, provided that the aggregate amount of any such Indebtedness outstanding at any time shall not exceed \$2,000,000; but excluding (in each case) Indebtedness incurred through the borrowing of money or contingent obligations in respect thereof;

(g) [reserved];

(h) [reserved];

(i) obligations (contingent or otherwise) of the Group Members existing or arising under any Specified Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.12 and not for purposes of speculation;

(j) Indebtedness of a Person (other than the Borrower or a Subsidiary) existing at the time such Person is merged with or into the Borrower or a Subsidiary or becomes a Subsidiary (excluding, in each case, any revolving line of credit and/or any Indebtedness secured by all or substantially all assets of such Person or by any Intellectual Property of such Person), provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness, and (iv) the aggregate principal amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding;

(k) Indebtedness in the form of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.7; provided that the amount of such obligation shall be deemed part of the cost of such Investment (the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP or the amount actually paid); provided further that any such Indebtedness (other than customary working capital adjustments) is subordinated on terms acceptable to the Administrative Agent in its sole discretion;

(l) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(m) Indebtedness consisting of the financing of insurance premiums;

(n) other Indebtedness in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding; and

(o) Indebtedness consisting of Permitted Litigation Financing incurred when no Event of Default has occurred and is continuing; provided that, to the extent such Indebtedness is recourse to any Group Member or any Group Member is otherwise obligated to repay any such Permitted Litigation Financing other than solely to the extent such repayment is with the proceeds of such Qualified Litigation Rights financed by such Permitted Litigation Financing, the aggregate amount of such Indebtedness shall not exceed \$10,000,000.

**7.3 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f) and any Liens granted as a replacement or substitute therefor; provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(d);

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the acquisition of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with, or within sixty (60) days after, the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (iii) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor or licensor under any lease or license entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed;

(j) judgment Liens that do not constitute a Default or an Event of Default under Section 8.1(h) of this Agreement;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depository institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection;

(l) (i) cash deposits and liens on cash and Cash Equivalents pledged to secure Indebtedness permitted under Section 7.2(f), (ii) Liens securing reimbursement obligations with respect to letters of credit permitted by Section 7.2(f) that encumber documents and other property relating to such letters of credit, and (iii) without duplication of any Liens permitted pursuant to Section 7.3(h) above, Liens securing Obligations under any Specified Swap Agreements permitted by Section 7.2(i);

(m) Liens on specific property (provided that such Liens shall not be permitted on Intellectual Property or to the extent such Lien is a blanket lien on all or substantially all of the assets of such Person) of a Person existing at the time such Person is acquired by, merged into or consolidated with a Group Member or becomes a Subsidiary of a Group Member or acquired by a Group Member; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(n) the replacement, extension or renewal of any Lien permitted by clause (m) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(o) Liens on insurance proceeds in favor of insurance companies granted solely to secured financed insurance premiums;

(p) Liens in favor of custom and revenue authorities arising as a matter of law to secure the payment of custom duties in connection with the importation of goods;

(q) Liens on any earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property not otherwise prohibited hereunder;



(r) other Liens securing obligations in an outstanding amount not to exceed \$5,000,000 at any one time; and

(s) Liens on the Qualified Litigation Rights and proceeds thereof, in each case solely to the extent created or deemed to exist in connection with a Permitted Litigation Financing permitted under Section 7.02(o) (including any related filings of any financing statements).

**7.4 Fundamental Changes.** Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Group Member that is not a Loan Party may be merged, amalgamated or consolidated with or into (A) any Loan Party (provided that a Loan Party shall be the continuing or surviving Person, or the continuing or surviving Person shall become a Loan Party substantially contemporaneous with such merger, amalgamation or consolidation) or (B) any Group Member that is not a Loan Party, and (ii) any Loan Party may be merged, amalgamated or consolidated with or into with any other Loan Party (provided that if such merger, amalgamation or consolidation involves the Borrower, the Borrower shall be the continuing or surviving Person);

(b) (i) any Group Member that is not a Loan Party may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Group Member or (B) pursuant to a Disposition permitted by Section 7.5; and (ii) any Loan Party (other than the Borrower) may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Loan Party or (B) pursuant to a Disposition permitted by Section 7.5; provided that, this clause (b) shall not permit the disposition of the Capital Stock of Appian Switzerland by Appian UK; and

(c) any Investment expressly permitted by Section 7.7 may be structured as a merger, consolidation or amalgamation.

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of obsolete or worn out property that is, in the reasonable judgement of Borrower, no longer economically practicable to maintain or useful in any material respect in the ordinary course of business of the Group Members;

(b) Dispositions of Inventory in the ordinary course of business;

(c) Dispositions permitted by Sections 7.4(b)(i)(A) and (b)(ii)(A);

(d) the sale or issuance of the Capital Stock of any Subsidiary of the Borrower (i) to the Borrower or any other Loan Party, or (ii) in connection with any transaction that does not result in a Change of Control;

(e) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) the non-exclusive licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the ordinary course of business;

(g) the Disposition of property (i) from any Loan Party to any other Loan Party, and (ii) from any Group Member (which is not a Loan Party) to any other Group Member; provided that this clause (g) will not permit the Disposition of the Capital Stock of Appian Switzerland by Appian UK, unless the Group Member to which the Capital Stock of Appian Switzerland is so disposed is also a wholly-owned Subsidiary of Appian UK;

(h) Dispositions of property subject to a Casualty Event;

(i) leases or subleases of real property;

(j) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;

(k) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;

(l) Restricted Payments permitted by Section 7.6, Investments permitted by Section 7.7 and Liens permitted by Section 7.3;

(m) any Foreign Subsidiary (other than Appian UK) may issue Capital Stock to qualified directors where required by or to satisfy any applicable Requirement of Law, including any Requirement of Law with respect to ownership of Capital Stock in Foreign Subsidiaries;

(n) Dispositions of other property having a fair market value not to exceed \$5,000,000 in the aggregate for any fiscal year of the Group Members, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition; and provided further that the Net Cash Proceeds thereof are used to prepay the Term Loans in accordance with Section 2.12(e); and

(o) Dispositions of Qualified Litigation Rights in connection with any Permitted Litigation Financing so long as no Event of Default has occurred and is continuing at the time the definitive documentation with respect to such Permitted Litigation Financing is consummated and upon the incurrence of any such Permitted Litigation Financing.

provided, however, that any Disposition made pursuant to this Section 7.5 (other than (x) Dispositions solely between Loan Parties, (y) Dispositions solely between Group Members that are not Loan Parties or (z) Dispositions between a Loan Party and a Group Member that is not a Loan Party in which the terms thereof in favor of a Loan Party are at least arm's length terms) shall be made in good faith on an arm's length basis for fair value.

**7.6 Restricted Payments.** Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, pay any earn-out payment, seller debt or deferred purchase price payments, declare or pay any dividend (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result immediately therefrom:

(a) any Group Member may make Restricted Payments to any Loan Party, and any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;

(b) each Group Member may (i) purchase common stock or common stock options from present or former officers or employees of any Group Member upon the death, disability or termination of employment of such officer or employee; provided that the aggregate amount of payments made under this clause (i) shall not exceed \$2,000,000 during any fiscal year of the Borrower, and (ii) declare and make dividend payments or other distributions payable solely in Capital Stock (other than Disqualified Stock) of the Borrower;

(c) [reserved].

(d) each Group Member may purchase, redeem or otherwise acquire Capital Stock issued by it with the proceeds received from the substantially concurrent issue of new shares of its Capital Stock (other than Disqualified Stock); provided that any such issuance is otherwise permitted hereunder (including by Section 7.5(d))

(e) (i) each Group Member may make repurchases of Capital Stock deemed to occur upon exercise of stock options or warrants if such repurchased Capital Stock represents a portion of the exercise price of such options or warrants, and (ii) each Group Member may make repurchases of Capital Stock deemed to occur upon the withholding of a portion of the Capital Stock granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting thereof);

(f) each Group Member may deliver its common Capital Stock upon conversion of any convertible Indebtedness having been issued by the Borrower; provided that such Indebtedness is otherwise permitted by Section 7.2;

(g) the Group Members may make earn-out payments, payments in respect of seller debt or deferred purchase price payments in connection with a Permitted Acquisition so long as (except in the case of ordinary course working capital adjustments) immediately after giving effect to such purchase or other acquisition, the Group Members shall be in compliance with each of the covenants set forth in Section 7.1(a) and (b), based upon financial statements (recalculated as though the relevant payment had been made on the last day of the applicable fiscal quarter) delivered to the Administrative Agent which give pro forma effect to the making of such payment (provided that if any such payment obligations constitute Subordinated Indebtedness, such payment must be permitted under Section 7.21; and provided further, that, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter after giving pro forma effect to such payment shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which such payment was made shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis giving effect to such payment; provided further, that if such payment is made prior to the reporting for the fiscal quarter ending December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022);

(h) any Group Member may make payments in respect of Subordinated Indebtedness solely to the extent such payment is made in accordance with Section 7.21; and

(i) the Group Members may make Restricted Payments not otherwise permitted by one of the foregoing clauses of this Section 7.6; provided that the aggregate amount of all such Restricted Payments made pursuant to this clause (i) shall not exceed \$2,500,000.

**7.7 Investments.** Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "**Investments**"), except:

- (a) extensions of trade credit in the ordinary course of business;
- (b) Investments in cash and Cash Equivalents;
- (c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to employees, officers, consultants and directors of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed \$2,500,000 at any one time outstanding;

(e) [reserved];

(f) intercompany Investments by (i) any Loan Party in any other Loan Party, (ii) any Group Member that is not a Loan Party in any other Group Member (provided that this shall not permit Investments constituting the contribution or other transfer of the Capital Stock of Appian Switzerland by Appian UK unless the transferee is a direct or indirect wholly-owned Subsidiary of Appian UK), (iii) any Loan Party in any Group Member that is not a Loan Party to the extent that (A) no Default or Event of Default exists or would result therefrom, and (B) such Investments do not exceed \$5,000,000 in any fiscal year of the Group Members (provided, that the limit in (B) shall not apply for any intercompany Investment funded solely with the proceeds of the issuance of Capital Stock of the Borrower which is used for Permitted Acquisitions) or (iv) any Loan Party in any Subsidiary (which is not a Guarantor) for amounts arising from customary transfer pricing or cost-plus services agreements entered into in the ordinary course of business and on terms that are, when taken as a whole and in the good faith judgment of the Borrower, no less favorable to the Loan Parties than would be obtained in arm's length transactions with a nonaffiliated third party;

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

(i) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment;

(j) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does exceed \$5,000,000 during any fiscal year of the Group Members;

(k) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(l) [reserved];

(m) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions; and

(n) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a "**Permitted Acquisition**"); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with such asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is permitted by Section 7.16;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, could reasonably be expected to result in the existence or incurrence of a Material Adverse Effect;

(iv) the Borrower shall give the Administrative Agent at least fifteen (15) Business Days' (or such later date as agreed to by the Administrative Agent in its sole discretion) prior written notice of any such purchase or acquisition;

(v) the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(vi) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its assets;

(vii) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing and (y) immediately after giving effect to such purchase or other acquisition, the Group Members shall be in compliance with each of the covenants set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent which give effect, on a Pro Forma Basis, to such acquisition or other purchase (provided that, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter after giving pro forma effect to such acquisition or other purchase shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which such acquisition or other purchase is consummated shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis giving effect to such acquisition or other purchase; provided further, that if such Permitted Acquisition is consummated prior to the reporting for the fiscal quarter ending December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until the Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022);

(viii) the Borrower shall not, based upon the knowledge of the Borrower as of the date any such acquisition or other purchase is consummated, reasonably expect such acquisition or other purchase to result in a Default or an Event of Default under Section 8.1(c), at any time during the term of this Agreement, as a result of a breach of any of the financial covenants set forth in Section 7.1;

(ix) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2(j);

(x) such purchase or acquisition shall not constitute an Unfriendly Acquisition;

(xi) (A) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by such Group Member in connection with any particular Permitted Acquisition shall not exceed \$50,000,000 (\$25,000,000 if Liquidity is less than or

equal to \$150,000,000 at the time of such Permitted Acquisition), and (B) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by all Group Members in connection with all such Permitted Acquisitions consummated from and after the Closing Date shall not exceed \$100,000,000;

(xii) the assets being acquired or the target whose stock is being acquired did not have losses in respect of pro forma Consolidated Adjusted EBITDA (calculated as though all references to Group Members contained in such definition or any other defined term used in such definition refer to the target) greater than \$10,000,000 (after taking into account reasonable adjustments, including the effects of proposed consolidation and restructuring by Borrower after such proposed purchase or acquisition) during the twelve (12) month consecutive period most recently concluded prior to the date the agreement to consummate such proposed purchase or acquisition is effective; and

(xiii) either (A) each such proposed purchase or acquisition is of a Person organized under the laws of the United States and engaged in business activities primarily conducted within the United States and which becomes a Loan Party or Collateral hereunder or (B) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by all of the Group Members with respect to assets which will not become part of the Collateral or a Person that will not become a Loan Party shall not exceed \$20,000,000 (\$10,000,000 if Liquidity is less than or equal to \$150,000,000 at the time of such Permitted Acquisition) (which amount in this clause (xiii)(B) shall be a sublimit of the consideration caps set forth in clause (xi) above and not in addition to such limits);

**7.8 ERISA.** The Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a material liability to any ERISA Affiliate, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could result in any material liability to any ERISA Affiliate, (e) permit the present value of all nonforfeitable accrued benefits under any Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) materially to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

**7.9 Optional Payments and Modifications of Certain Preferred Stock and Debt Instruments.** (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock (i) that would move to an earlier date the scheduled redemption date (but only to the extent that moving any such scheduled redemption date would result in the redemption to be prior to ninety-one (91) days after the latest of the Revolving Termination Date or Term Loan Maturity Date) or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party; or (b) other than pursuant to any refinancing or replacement of Indebtedness permitted by Section 7.2, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Indebtedness permitted by Section 7.2 (other than Indebtedness pursuant to any Loan Document and Subordinated Indebtedness which is addressed in Section 7.21) that would shorten the maturity (but only to the extent such shortening, would result in the maturity of such Indebtedness to be prior to ninety-one (91) days after the Revolving Termination Date) or increase the amount of any payment of principal thereof or the rate of interest thereon or shorten any date for payment of interest thereon or that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party.

**7.10 Transactions with Affiliates.** Directly or indirectly, enter into or permit to exist any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or

the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

**7.11 Sale Leaseback Transactions.** Enter into any Sale Leaseback Transaction, except in connection with transactions that would be permitted under this Section 7 (and in no event in respect of any Intellectual Property).

**7.12 Swap Agreements.** Enter into any Swap Agreement, except Specified Swap Agreements which are entered into by a Group Member to (a) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (b) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member.

**7.13 Accounting Changes.** Make any change in its (a) accounting policies or reporting practices, except in accordance with GAAP, or (b) fiscal year.

**7.14 Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as (i) any such prohibition contained in any such agreement applies solely with respect to the creation, incurrence, assumption or sufferance by such Subsidiary of a Lien upon assets that are not Collateral, and (ii) such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein, and (e) any restriction pursuant to any document, agreement or instrument governing or relating to any Lien permitted under Sections 7.3(c), (m) and (n) or any agreement or option to Dispose any asset of any Group Member, the Disposition of which is permitted by any other provision of this Agreements (in each case, provided that any such restriction relates only to the assets or property subject to such Lien or being Disposed).

**7.15 Clauses Restricting Subsidiary Distributions.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, or (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby (v) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein, or (vi) any restriction pursuant to any

document, agreement or instrument governing or relating to any Lien permitted under Section 7.3(c), (m) and (n) (provided that any such restriction relates only to the assets or property subject to such Lien or being Disposed).

**7.16 Lines of Business.** Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Group Members are engaged on the date of this Agreement or that are reasonably related, ancillary, complementary, or incidental thereto, or representing a reasonable expansion thereof.

**7.17 Designation of other Indebtedness.** Designate any Indebtedness or indebtedness other than the Obligations as “Designated Senior Indebtedness” or a similar concept thereto, if applicable, except to the extent otherwise permitted hereunder.

**7.18 [Reserved].**

**7.19 Amendments to Organizational Agreements and Material Contracts.** (a) Amend or permit any amendments to any Loan Party’s or Appian UK’s organizational documents, without prior notice to the Administrative Agent (provided that no amendments to any such organizational documents may be entered into to the extent that such amendments could reasonably be expected to be materially adverse to the Secured Parties); or (b) amend or permit any amendments to, or terminate or waive any provision of, any material Contractual Obligation if such amendment, termination, or waiver would be adverse to the Administrative Agent or the Lenders in any material respect.

**7.20 Use of Proceeds.** Use the proceeds of any Loan or extension of credit hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board; (b) to finance an Unfriendly Acquisition; (c) to make any payment to a Sanctioned Person or Sanctioned Entity, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person or to otherwise fund, in violation of any Sanctions, any activities of or business with any Sanctioned Person or in any Designated Jurisdiction, or in any other manner that will result in a violation by any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, Issuing Lender, Swingline Lender, or otherwise of Sanctions (or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity in violation of the foregoing); or (d) for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, any Anti-Money Laundering Laws or other similar legislation in other jurisdictions.

**7.21 Subordinated Debt.**

(a) Amendments. Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Group Members’ ability to pay and perform each of their Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

(b) Payments. Make any payment (including any interest payment, other than paid-in-kind interest), prepayment or repayment on, redemption, exchange or acquisition for value of, any sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

**7.22 Anti-Terrorism Laws.** Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities in



violation of Sanctions: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (a “**Blocked Person**”), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act.

## SECTION 8 EVENTS OF DEFAULT

**8.1 Events of Default.** The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay any amount of principal of any Loan when due in accordance with the terms hereof; or the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in, Section 5.3, Section 6.2 (other than Section 6.2(b)), clause (i) of Section 6.5(a), Section 6.8(a), Section 6.10, Section 6.15 or Section 7 of this Agreement or (ii) an “Event of Default” under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance (i) Section 6.1 or Section 6.2(b) and such default shall continue unremedied for a period of five (5) Business Days thereafter or (ii) of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied for a period of thirty (30) days thereafter; or

(e) (i) any Group Member shall (A) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; (B) default in making any payment of any interest, fees, costs or expenses on any such Indebtedness (other than the Loans) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (C) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (D) default in the observance or performance of any other agreement or condition relating to any such Indebtedness (other than the Loans) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (1) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (2) to cause, or to permit, with the giving of notice if required, any Group Member to purchase, redeem, mandatorily prepay or make an offer to purchase, redeem or mandatorily prepay such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in any of clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall have occurred with

respect to Indebtedness, the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate for all such Indebtedness, exceeds \$5,000,000; or (ii) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismitted, undischarged or unbonded for a period of sixty (60) days (provided that, during such sixty (60) day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof (provided that, during such sixty (60) day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of \$5,000,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 401(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds \$5,000,000; or

(h) there is entered against any Group Member (i) one or more final judgments or orders for the payment of money involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) all such judgments or decrees shall not have been paid, vacated, discharged, stayed or bonded pending appeal within forty-five (45) days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(i) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business that has, or could reasonably be expected to have individually or in the aggregate, a Material Adverse Effect; or

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(k) a Change of Control shall occur; or

(l) [reserved]; or

(m) any of the Governmental Approvals necessary for any of the Group Members to operate its respective business shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term that has, or could reasonably be expected to have, a Material Adverse Effect, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of the Governmental Approvals or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or nonrenewal (x) has, or could reasonably be expected to have, a Material Adverse Effect, or (y) materially adversely affects the legal qualifications of any Group Member to hold any material Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or nonrenewal could reasonably be expected to materially adversely affect the status of or legal qualifications of any Group Member to hold any material Governmental Approval in any other jurisdiction; or

(n) any Loan Document (including the subordination provisions of any subordination or intercreditor agreement governing Subordinated Indebtedness) not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document.

**8.2 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to any Loan Party, the Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Term Loan Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Term Loan Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Cash Management Bank may terminate any Cash Management Agreement then outstanding and declare all Obligations then owing by the Group Members under any such Cash Management Agreements then outstanding to be due and payable forthwith, whereupon the same shall immediately become due and payable; and (iv) the Administrative Agent may exercise on behalf of itself, any Cash Management Bank, the Lenders and the Issuing Lender all rights and remedies available to it, any such Cash Management Bank, the Lenders and the Issuing Lender under the Loan Documents.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3.

In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by any applicable Cash Management

Bank, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Cash Management Services then outstanding, which Cash Collateralized amounts shall be applied by the Administrative Agent to the payment of all such outstanding Cash Management Services, and any unused portion thereof remaining after all such Cash Management Services shall have been fully paid and satisfied in full shall be applied by the Administrative Agent to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents in accordance with the terms of Section 8.3.

(c) After all such Letters of Credit and Cash Management Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Cash Management Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

**8.3 Application of Funds.** After the exercise of remedies provided for in Section 8.2 or following non-payment of the Obligations at maturity, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21 (including interest thereon)) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and Letter of Credit Fees) payable to the Lenders, the Issuing Lender ((including any Letter of Credit Fronting Fees and Issuing Lender Fees), and any Qualified Counterparty and any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and the reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender, and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to the extent that the Swingline Lender has advanced any Swingline Loans that have not been refunded by each Lender's Swingline Participation Amount, payment to the Swingline Lender of that portion of the Obligations constituting the unpaid principal of and interest upon the Swingline Loans advanced by the Swingline Lender;

Fourth, to the payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest in respect of any Cash Management Services and on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, and to payment of premiums and other fees (including any interest thereon) under any Specified Swap Agreements and any Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Disbursements which have not yet been converted into Revolving Loans, and settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements (but in the case of Specified Swap Agreements and Cash Management Agreements, in an aggregate amount under this clause fifth (with any greater amounts to be included in clause seventh below), not to exceed (for any provider of Specified Swap Agreements and Cash Management Agreements and their Affiliates taken as a whole) \$10,000,000 in respect of all Specified Swap Agreements and Cash Management Agreements provided by such providers and their Affiliates taken as a whole), in each case, ratably among the Lenders, any applicable Cash Management

Bank (in its respective capacity as a provider of Cash Management Services), and any applicable Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fifth and payable to them;

Sixth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn Dollar Equivalent amount of Letters of Credit pursuant to Section 3.10;

Seventh, for the account of any applicable Qualified Counterparty and any applicable Cash Management Bank, to any settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements not paid pursuant to clause Fifth and to cash collateralize Obligations arising under any then outstanding Specified Swap Agreements and Cash Management Services, in each case, ratably among them in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations described in this clause Eighth and payable to them; and

Last, the balance, if any, after the Discharge of Obligations, to the Borrower or as otherwise required by Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn Dollar Equivalent amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral for Letters of Credit after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, no Excluded Swap Obligation of any Guarantor shall be paid with amounts received from such Guarantor or from any Collateral in which such Guarantor has granted to the Administrative Agent a Lien (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement; provided, however, that each party to this Agreement hereby acknowledges and agrees that appropriate adjustments shall be made by the Administrative Agent (which adjustments shall be controlling in the absence of manifest error) with respect to payments received from other Loan Parties to preserve the allocation of such payments to the satisfaction of the Obligations in the order otherwise contemplated in this Section 8.3.

## **SECTION 9 THE ADMINISTRATIVE AGENT**

### **9.1 Appointment and Authority.**

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders, the Issuing Lender, and the Swingline Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or obligations, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to

connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each of the Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty and provider of Cash Management Services) hereby irrevocably (i) authorizes the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement and any subordination or intercreditor agreements, and (ii) appoints and authorizes the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

**9.2 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

**9.3 Exculpatory Provisions.** The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any

information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

**9.5 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (except with respect to defaults in the payment of regularly scheduled principal and interest payments required to be paid to the Administrative Agent for the account of the Lenders to the extent that the Administrative Agent has actual knowledge of such payment default, such events a “*specified payment default*”) unless the Administrative Agent has received notice in writing from a Lender or a Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “*notice of default*.” In the event that the Administrative Agent receives such a notice (or has actual knowledge of the occurrence of a specified payment default), the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless

and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**9.6 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any Affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

**9.7 Indemnification.** Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Loan Parties to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Loan Parties; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

**9.8 Agent in Its Individual Capacity.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other



advisory capacity for and generally engage in any kind of business with the Group Members or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

#### **9.9 Successor Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent approved by the Required Lenders meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

#### **9.10 Collateral and Guaranty Matters.**

(a) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (A) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, Cash Management Agreements and Specified Swap Agreements (other than Letters of Credit, Cash

Management Agreements and Specified Swap Agreements as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender, Cash Management Bank or the provider of such Specified Swap Agreement shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder, or (C) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.3(g) and (i); and

(iii) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(iv) (x) automatically upon the consummation of any Permitted Litigation Financing to the extent such Permitted Litigation Rights solely involves a Disposition (rather than a grant of a security interest) of the Qualified Litigation Rights being financed, to release any Lien on such Qualified Litigation Rights disposed in connection with such Permitted Litigation Financing, without the need to deliver any instrument or performance of any act by any Person and (y) upon the consummation of any Permitted Litigation Financing where the Borrower retains title to the Qualified Litigation Rights being financed to the extent such Permitted Litigation Rights solely involves a grant of a security interest (rather than a Disposition) of such Qualified Litigation Rights to the provider of such Permitted Litigation Financing, to subordinate Administrative Agent's Lien on such Qualified Litigation Rights.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the guaranty pursuant to this Section 9.10.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Notwithstanding anything contained in any Loan Document, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guaranty of the Obligations (including any such guaranty provided by the Guarantors pursuant to the Guarantee and Collateral Agreement), it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof; provided that, for the avoidance of doubt, in no event shall a Secured Party be restricted hereunder from filing a proof of claim on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law or any other judicial proceeding. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of such Secured Party (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, to have agreed to the foregoing provisions. In furtherance of the foregoing, and not in limitation thereof, no Specified Swap Agreement and no Cash Management Agreement, the Obligations under which constitute Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in

connection with the management or release of any Collateral or of the Obligations of any Loan Party under any Loan Document except as expressly provided herein or in the Guarantee and Collateral Agreement. By accepting the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, any Secured Party that is a Cash Management Bank or a Qualified Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and to have agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

**9.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable and documented compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.12 No Other Duties, etc..** Anything herein to the contrary notwithstanding, none of the “Bookrunners,” “Arrangers,” or “Co-Documentation Agents” listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

**9.13 Cash Management Bank and Qualified Counterparty Reports.** Each Cash Management Bank and each Qualified Counterparty agrees to furnish to the Administrative Agent, as frequently as the Administrative Agent may reasonably request, with a summary of all Obligations in respect of Cash Management Services and/or Specified Swap Agreements, as applicable, due or to become due to such Cash Management Bank or Qualified Counterparty, as applicable. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Cash Management Bank or Qualified Counterparty (in its capacity as a Cash Management Bank or Qualified Counterparty and not in its capacity as a Lender) unless the Administrative Agent has received written notice thereof from such Cash Management Bank or Qualified Counterparty and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Cash Management Bank or Qualified Counterparty on account of Cash Management Services or Specified Swap Agreements are set forth in such notice.

#### **9.14 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(b) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit

fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

#### 9.15 Recovery of Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party (any such Lender, Issuing Lender, Swingline Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Lender, Swingline Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Lender, Swingline Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Lender, Swingline Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Lender, Swingline Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.15(b).

(c) Each Lender, Issuing Lender, Swingline Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Lender, Swingline Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Lender, Swingline Lender or

Secured Party from any source, against any amount due to the Administrative Agent under clause (a) hereof or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with clause (a) hereof, from any Lender, Issuing Lender or Swingline Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender, Issuing Lender or Swingline Lender at any time, (i) such Lender, Issuing Lender or Swingline Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender, Issuing Lender or Swingline Lender shall deliver any Notes evidencing such Loans to Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Lender or assigning Swingline Lender shall cease to be a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, assigning Issuing Lender or assigning Swingline Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender, Issuing Lender or Swingline Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender, Issuing Lender or Swingline Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender, Issuing Lender or Swingline Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Lender, Swingline Lender or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on “discharge for value” or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.15 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, Swingline Lender or Issuing Lender, or the Discharge of Obligations.

**9.16 Survival.** This Section 9 shall survive the Discharge of Obligations.

## SECTION 10 MISCELLANEOUS

### 10.1 Amendments and Waivers.

(a) Neither this Agreement, any other Loan Document (other than any L/C Related Document), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that (in addition to the Required Lender's consent set forth above) no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment (including, for the avoidance of doubt, any payment due on the Term Loan Maturity Date) in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder, including any waiver, amendment, supplement or modification of Section 2.27(e)(vi) or the MFN Protection (except that no amendment or modification of defined terms used in the financial covenants in this Agreement or waiver of any Default or Event of Default or the right to receive interest at the Default Rate) shall constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment or Term Loan Commitment, in each case, without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) reduce any percentage (or the requirement for at least two unaffiliated Lenders) specified in the definition of Required Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents or permit the assignment of Loans or Commitments by any Lender to the Borrower, any of the Borrower's Subsidiaries, the Permitted Investor or any of the Borrower's or Permitted Investor's Affiliates, release all or substantially all of the Collateral, contractually subordinate the Obligations (including any guarantees thereof) or the Administrative Agent's Lien on all or substantially all of the Collateral, or release all or substantially all of the value of the guarantees (taken as a whole) of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) (i) amend, modify or waive the *pro rata* requirements of Section 2.10 or Section 2.18 or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders in a manner that adversely affects Revolving Lenders (or any of them) without the written consent of each Revolving Lender (it being understood that a non-ratable commitment reduction other than in connection with Section 2.23 or Section 2.24 is deemed to have an adverse effect) or (ii) amend, modify or waive the *pro rata* requirements of Section 2.10 or Section 2.18 or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders in a manner that adversely affects Term Loan Lenders or the L/C Lenders (or any of them) (it being understood that a non-ratable commitment reduction other than in connection with Section 2.23 or Section 2.24 is deemed to have an adverse effect) without the written consent of each Term Loan Lender and/or, as applicable, each L/C Lender; (E) [reserved]; (F) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (G) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (H) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (I) (i) amend or modify the application of prepayments set forth in Section 2.12(e) or the application of payments set forth in Section 8.3 without the written consent of each Lender and the Issuing Lender. Any such waiver and any such amendment,

supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Cash Management Bank, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Related Documents without the consent of the Administrative Agent or any other Lender and the Issuing Lender, Administrative Agent and the Borrower may make customary technical amendments if any Letter of Credit shall be issued hereunder in a currency other than U.S. Dollars. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower requests that this Agreement or any of the other Loan Documents be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower, the Administrative Agent and the Required Lenders, this Agreement or such other Loan Document may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a “**Minority Lender**”), to provide for:

(i) the termination of the Commitment of each such Minority Lender;

(ii) the assumption of the Loans and Commitment of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and

(iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) [Reserved].

(d) Notwithstanding any other provision, no consent of any Lender (or other Secured Party other than the Administrative Agent) shall be required to effectuate any amendment to implement any Incremental Revolving Commitment or Incremental Term Loan permitted by Section 2.27 or to effect an alternate interest rate in a manner consistent with Section 2.17.

(e) Notwithstanding any provision herein to the contrary, any Cash Management Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

(f) Notwithstanding any provision herein or in any other Loan Document to the contrary, no Cash Management Bank and no Qualified Counterparty shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of Cash Management Services or Specified Swap Agreements or Obligations owing thereunder, nor shall the consent of any such Cash Management Bank or Qualified Counterparty, as applicable, be required for any matter, other than in their capacities as Lenders, to the extent applicable.



(g) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the Loan Documents to cure any omission, mistake or defect.

**10.2 Notices.** All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower: Appian Corporation  
7950 Jones Branch Dr.  
McLean, VA 22102  
Attention: Mark Matheos, Chief Financial Officer with a copy  
to Chris Winters, General Counsel

E-Mail: mark.matheos@appian.com with a copy to  
chris.winters@appian.com  
Website URL: www.appian.com

Administrative Agent: Silicon Valley Bank  
1200 17<sup>th</sup> St., 16<sup>th</sup> Floor  
Denver, CO 80202  
Attention: Will Deevy  
E-Mail: wdeevy@svb.com

With a copy (which shall not constitute notice) to:

Morrison & Foerster LLP  
200 Clarendon Street  
Boston, Massachusetts 02116  
Attention: Charles W. Stavros, Esq.  
E-Mail: cstavros@mofo.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(a) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(b) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(c) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “*Agent Parties*”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform. “*Communications*” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

#### **10.5 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary outside legal counsel for the Administrative Agent and, if necessary or appropriate, one local counsel in each relevant jurisdiction (and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable and documented fees, charges and disbursements of one primary outside counsel and if necessary or appropriate, one local counsel in each relevant jurisdiction for the Administrative Agent or the Lenders, taken as a whole, which shall be counsel to the Administrative Agent (and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including

all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “*Indemnitee*”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one counsel and, if necessary or appropriate, one local counsel in each relevant jurisdiction, for the Administrative Agent and the Lenders, taken as a whole, and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Group Members, or any Environmental Liability related in any way to the Group Members, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction; and provided further, that neither Borrower nor any other Loan party shall have any liability to any Indemnitee hereunder for indirect, special, incidental or consequential damages (except any such claims brought against such Indemnitee by a third party (and not the Administrative Agent, any Lender or any Related Parties of the Administrative Agent or any other Lender)). This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower and each other Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the Discharge of Obligations.

#### **10.6 Successors and Assigns; Participations and Assignments.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which, for purposes of this Section 10.6, shall include any Cash Management Bank and any Qualified Counterparty, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of Section 10.6(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or \$5,000,000, in the case of any assignment in respect of the Term Loan Facility, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each

such consent not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof, and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis. Notwithstanding the forgoing or anything herein to the contrary, the L/C Facility is a sublimit of the Revolving Facility and the commitments and obligations in respect of the Revolving Facility and the L/C Facility shall be assigned on a pro rata basis with each other.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof, and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Facility or any unfunded Commitments with respect to the Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lender and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates (including for the avoidance of doubt the Permitted Investor and its Affiliates) or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of

the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f)) (it being understood that the documentation required under

Section 2.20(f) shall be delivered by such Participant to the Lender granting such participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 2.23 as if it were an assignee under Section 10.6(b); and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Commitments and Loans; and (iii) it will make or invest in its Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

#### **10.7 Adjustments; Set-off.**

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "**Benefitted Lender**") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess

payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being expressly waived by each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of any Loan Party, against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

**10.8 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the Discharge of Obligations.

**10.9 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude optional prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.



#### **10.10 Counterparts; Electronic Execution of Assignments.**

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of an original executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

(b) The words "execution," "signed," "signature," and words of like import in this Agreement or any Loan Document or any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.11 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.12 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**10.13 GOVERNING LAW. THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.** This Section 10.13 shall survive the Discharge of Obligations.

**10.14 Submission to Jurisdiction; Waivers.** Each party hereto hereby irrevocably and unconditionally:

(a) agrees that all disputes, controversies, claims, actions and other proceedings involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement, any other Loan Document, any contemplated transactions related hereto or thereto, or the relationship between any Loan Party, on the one hand, and the Administrative Agent or any Lender or any other Secured Party, on the other hand, and any and all other claims of any Group Member against the Administrative Agent or any Lender or any other Secured Party of any kind, shall be brought only in a state court located in the Borough of Manhattan, or in a federal court sitting in the Borough of Manhattan; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender or any other Secured Party from bringing suit or taking other legal action in any other

jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender or any other Secured Party. The Borrower, on behalf of itself and each other Loan Party, (i) expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court and to the selection of any referee referred to below, (ii) hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court, and (iii) agrees that it shall not file any motion or other application seeking to change the venue of any such suit or other action. The Borrower, on behalf of itself and each other Loan Party, hereby waives personal service of any summons, complaints, and other process issued in any such action or suit and agrees that service of any such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

**(b) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY, AMONG ANY OF THE PARTIES HERETO AND THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THE BORROWER AND EACH OTHER LOAN PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;**

(c) [reserved]; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages; provided that nothing contained herein shall limit the right of any Indemnitee to be indemnified as provided in this Agreement and the other Loan Documents.

This Section 10.14 shall survive the Discharge of Obligations.

**10.15 Acknowledgements.** The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) in connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower, on behalf of each Group Member, acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, and the Lenders and any Affiliate thereof are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective applicable Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, its Affiliates, each Lender and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, its Affiliates, the Lenders and their Affiliates may be engaged in a broad range of transactions that involve

interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, its Affiliates, each Lender and any of their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Group Members and the Lenders.

#### **10.16 Releases of Guarantees and Liens.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral (other than any cash collateral securing any Specified Swap Agreements, any Cash Management Services or outstanding Letters of Credit) shall be released from the Liens created by the Security Documents (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements), and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements) shall terminate, all without delivery of any instrument or performance of any act by any Person.

**10.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating any Group Member or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower. In addition, the Administrative Agent, the Lenders, and any of their respective Related Parties, may (A) disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments; and (B) use any information (not constituting Information subject to the foregoing

confidentiality restrictions) related to the syndication and arrangement of the credit facilities contemplated by this Agreement and the Borrower's logo in connection with marketing, league tables, press releases, or other transactional announcements or updates provided to investor or trade publications, including the placement of "tombstone" advertisements in publications of its choice at its own expense.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws, rules, and regulations.

For purposes of this Section, "**Information**" means all information received from the Group Members relating to the Group Members or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Group Members; provided that, in the case of information received from the Group Members after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**10.18 Automatic Debits.** With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of the Administrative Agent or any Lender payable by the Borrower hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "**Agreement Currency**"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

**10.20 Patriot Act; Other Regulations.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation, it is required to obtain, verify and

record information that identifies each Loan Party and certain related parties thereto, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party and certain of their beneficial owners and other officers in accordance with the Patriot Act and the Beneficial Ownership Regulation. The Borrower and each other Loan Party will, and will cause each of their respective Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and documents and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws.

**10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in this Agreement or in any other Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**10.22 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties hereto hereby acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default

Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

(i) “**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(ii) “**Covered Entity**” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(iii) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[Remainder of page left blank intentionally]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

**APPIAN CORPORATION**

By: /s/ Matthew W. Calkins

Name: Matthew W. Calkins

Title: Chief Executive Officer

**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK**

By: /s/ Will Deevy

Name: Will Deevy

Title: Managing Director



**LENDERS:**

**SILICON VALLEY BANK,**  
as Issuing Lender, Swingline Lender and as a Lender

By: /s/ Will Deevy

Name: Will Deevy

Title: Managing Director

**COMERICA BANK,**  
as a Lender

By: /s/ Robert Muzquiz Jr.

Name: Robert Muzquiz Jr.

Title: Vice President

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as a Lender

By: /s/ Brian Carbone

Name: Brian Carbone

Title: Authorized Signatory

JOINDER AND FIRST AMENDMENT TO CREDIT AGREEMENT

This Joinder and First Amendment to Credit Agreement (this “*Amendment*”) is made effective as of December 13, 2022 (the “*First Amendment Effective Date*”), by and among **Appian Corporation**, a Delaware corporation (the “*Borrower*”), the lenders identified on the signature pages hereto (the “*Lenders*”), **Silicon Valley Bank (“SVB”)**, as administrative agent and collateral agent for the Lenders (in such capacities, the “*Administrative Agent*”), Issuing Lender and Swingline Lender, in consideration of the mutual covenants herein contained and benefits to be derived herefrom:

WITNESSETH:

WHEREAS, reference is made to that certain Credit Agreement dated as of November 3, 2022 (as may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time, the “*Credit Agreement*”), by and among, among others, the Borrower, the Administrative Agent and the Lenders. All capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned to such terms in the Credit Agreement;

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent agree to modify and amend certain terms and conditions of the Credit Agreement, including, among other things, to (i) extend additional Term Loans in an aggregate principal amount not to exceed \$20,000,000 (the “*First Amendment Term Loans*”) and (ii) increase the Revolving Commitment outstanding immediately prior to the First Amendment Effective Date by \$10,000,000, in each case, on the First Amendment Effective Date, subject to the terms and conditions contained herein;

WHEREAS, MUFG Bank, Ltd. (the “New Lender”) for the purpose of funding the First Amendment Term Loan (as defined herein) and to extend additional Revolving Commitments, the New Lender desires to join in, and become party to, the Credit Agreement as a Lender thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Joinder and Assumption of Obligations.

(a) Effective as of the First Amendment Effective Date and subject to the terms and conditions set forth herein, the New Lender further acknowledges and agrees:

(i) to join in the execution of, and become a party to, the Credit Agreement as a Lender;

(ii) to be bound by all representations, warranties, covenants, agreements, liabilities and acknowledgments of a Lender under the Credit Agreement and the other Loan Documents, in each case, with the same force and effect as if the New Lender was a signatory to the Credit Agreement and the other Loan Documents and was expressly named as a Lender therein; and

(iii) to have all rights and obligations of a Lender under the Credit Agreement and other Loan Documents.

(b) The New Lender (i) represents and warrants that (A) from and after the First Amendment Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder, and shall have the obligations of a Lender thereunder with respect to its Revolving Commitments and the First Amendment Term Loans, (B) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Amendment and to extend Revolving Commitments and the First Amendment Term Loans, (C) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Amendment and to extend Revolving Commitments and the First Amendment Term Loans, and (D) if it is a Non-U.S. Lender, it has delivered to the Administrative Agent any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the New Lender, and (ii) agrees that (A) it will, independently and without reliance on the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (B) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Amendments to the Credit Agreement.

(a) Composite Credit Agreement. The Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: **double-underlined text**) as set forth in the pages of the Credit Agreement attached as Annex A hereto.

(b) Schedules to Credit Agreement.

(i) The Schedules to the Credit Agreement are hereby deleted in their entirety and the Schedules attached as Annex A hereto are substituted therefor.

3. Term Loans and Revolving Commitments. Subject to the terms and conditions set forth herein, effective upon the First Amendment Effective Date:

(a) each Lender with a First Amendment Term Loan Commitment on the First Amendment Effective Date severally shall make a Loan (the "***First Amendment Term Loan***") in an amount equal to such Lender's First Amendment Term Loan Commitment, which aggregate original principal amount of all First Amendment Term Loans on the First Amendment Effective Date shall equal \$20,000,000 (which for the avoidance of doubt shall reduce the cap on the amount of Incremental Term Loans set forth in Section 2.27(a) of the Credit Agreement). The First Amendment Term Loan shall be applied in accordance with the sources and uses delivered to the Administrative Agent on or prior to the First Amendment Effective Date.

(b) The additional Revolving Commitments being extended on the First Amendment Effective Date shall equal \$10,000,000 (which for the avoidance of doubt shall reduce the cap on the amount of Incremental Revolving Commitments set forth in Section 2.27(b) of the Credit Agreement).

4. Conditions Precedent to Effectiveness. This Amendment shall not be effective until each of the following conditions precedent has been fulfilled to the satisfaction of the Administrative Agent:

(a) This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof and of each other document required hereunder.

(b) The Administrative Agent shall have received a duly executed copy of the First Amendment Fee Letter dated as of the date hereof.

(c) The Borrower shall have (i) paid to the Administrative Agent all fees set forth in the First Amendment Fee Letter, (ii) paid all expenses and reimbursements pursuant to Section 10 hereof, to the extent provided to the Borrower at least three (3) Business Days prior to the First Amendment Effective Date, and (iii) paid to the Administrative Agent for the benefit of the Lenders all interest and revolving loan commitment fees as described in Section 2.9(b) of the Credit Agreement in each case accrued and unpaid as of the First Amendment Effective Date, it being understood and agreed that the Borrower hereby authorizes the Administrative Agent to pay all such fees and expenses pursuant to this clause (c) with a portion of the First Amendment Term Loans and payment of the same from such proceeds shall satisfy this clause (c).

(d) The Administrative Agent shall have received, in respect of the First Amendment Term Loans to be made on the First Amendment Effective Date, a completed Notice of Borrowing executed by the Borrower and attaching a funds flow or sources and uses schedule.

(e) All material Governmental Approvals and consents and approvals of, or notices to, shall have been obtained and be in full force and effect (or waived, and if such waiver is materially adverse to the interests of the Lenders, with the consent of the Administrative Agent).

(f) Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except to the extent (i) such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date or (ii) such representations and warranties are qualified by materiality in the text thereof, in which case they shall be true and correct in all respects.

(g) Upon giving effect to this Amendment and the incurrence of all Indebtedness contemplated hereby, no Default or Event of Default shall have occurred and be continuing.

(h) To the extent requested by any Lender at least three (3) Business Days prior to the First Amendment Effective Date, such Lender shall have received Notes, in each case, duly executed by the Borrower.

(i) The Administrative Agent shall have received (i) a certificate of each Loan Party, dated First Amendment Effective Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C attached to the Credit Agreement, with appropriate insertions and attachments, including (A) the Operating Documents of such Loan Party certified, in the case of formation documents, as of a recent date by the secretary of state or similar official of the relevant jurisdiction of organization of such Loan Party or that there has been no change to Operating Documents of such Loan Party that were previously delivered to the Administrative Agent (which may be in the form of a certification from such Loan Party that there have been no changes from the Operating Documents previously delivered to the Administrative Agent on the Closing Date), (B) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Amendment and the

other Loan Documents to which such Loan Party is a party thereto, and (C) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party (which may be in the form of a certification from such Loan Party that there have been no changes from the incumbency and signature specimens previously delivered to the Administrative Agent on the Closing Date) and (ii) a long form good standing certificate for each Loan Party from its respective jurisdiction of organization.

(j) The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower, certifying that the Loan Parties, taken as a whole are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred on the First Amendment Effective Date will be, Solvent.

(k) The Administrative Agent shall have received the executed legal opinion of (i) Davis Polk & Wardwell LLP, New York counsel to the Loan Parties, and (ii) Morris, Nichols, Arsht & Tunnell LLP, Delaware counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent. Such legal opinions shall cover such matters incident to the transactions contemplated by this Amendment as the Administrative Agent may reasonably require.

(l) On the First Amendment Effective Date, (1) after giving effect to the transactions contemplated by this Amendment (including the payment of all fees and expenses, the incurrence of all additional Indebtedness), Liquidity shall be not less than \$40,000,000, (2) the Consolidated Total Indebtedness to Recurring Revenue Ratio does not exceed 0.75:1.00 and (3) the Borrower is otherwise in pro forma compliance with the then-applicable financial covenants set forth in Section 7.1 of the Credit Agreement (as amended by this Amendment). No Revolving Loans shall be outstanding on the First Amendment Effective Date after giving effect to the funding of the First Amendment Term Loan.

(m) Each Lender shall have received, prior to the First Amendment Effective Date, to the extent requested at least two (2) Business Days prior to the First Amendment Effective Date, all documentation and other information requested to comply with applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation (including the Beneficial Ownership Certification), and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(n) The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying as to compliance with the requirements of Section 5.2 of the Credit Agreement and clause (l) above, together with all reasonably detailed calculations evidencing compliance with clause (l) above after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection with the First Amendment.

5. [Reserved].

6. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and the Lenders as follows:

(a) This Amendment is, and each other Loan Document to which it is or will be a party, when executed and delivered by each Loan Party that is a party thereto, will be the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally.

(b) The representations and warranties set forth in this Amendment, the Credit Agreement, as amended by this Amendment, and the other Loan Documents to which it is a party are, and after giving effect hereto, the incurrence of Indebtedness contemplated hereby, will be, (i) to the extent qualified by materiality, true and correct in all respects, and (ii) to the extent not qualified by materiality, true and correct in all material respects, in each case, on and as of the date hereof, as though made on such date (except to the extent that such representations and warranties relate solely to an earlier date).

(c) The execution, delivery, and performance of this Amendment by the applicable Loan Party (i) has been duly authorized by all necessary action by it, and (ii) does not and will not (A) violate any material Requirement of Law binding on it or its Subsidiaries, (B) violate any material Contractual Obligation of it or its Subsidiaries, except to the extent that any such violation would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect on the Borrower or its business, (C) result in or require the creation or imposition of any Lien upon any properties or assets of any Group Member pursuant to any Requirement of Law or any such Contractual Obligation, other than Liens created by the Security Documents and Liens permitted under the Credit Agreement, or (D) require any approval of any Group Member's interest holders or any approval or consent of any Person under any material Contractual Obligation of any Group Member, other than consents or approvals that have been obtained or made and that are still in force and effect and except, in the case of material Contractual Obligations, for consents or approvals, the failure of which to obtain would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect on the Borrower or its business.

7. Choice of Law. This Amendment and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the internal laws (and not the conflict of law rules) of the State of New York.

8. Counterpart Execution. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment.

9. Effect on Loan Documents.

(a) The Credit Agreement as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of the Administrative Agent or any Lender under the Credit Agreement or any other Loan Document. The consents, modifications and other agreements herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, and except as expressly set forth herein, shall neither excuse any non-compliance with the Loan Documents, nor operate as a consent or waiver to any matter under the Loan Documents. Except for the amendments to the Credit Agreement expressly set forth herein, the Credit Agreement and other Loan Documents shall remain unchanged and in full force and effect. To the extent any terms or provisions of this Amendment conflict with those of the Credit Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

(b) This Amendment is a Loan Document.



10. Payment of Costs and Fees. The Borrower shall pay to the Administrative Agent, and each Lender, all costs and all reasonable out-of-pocket expenses in connection with the preparation, negotiation, execution and delivery of this Amendment and any documents and instruments relating hereto (which costs include, without limitation, the reasonable fees and expenses of outside counsel retained by the Administrative Agent, in each case, as set forth in Section 10.5 of the Credit Agreement).

11. Entire Agreement. This Amendment, and terms and provisions hereof, the Credit Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

12. Reaffirmation. Each Loan Party hereby reaffirms its obligations under each Loan Document to which it is a party. Each Loan Party hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guaranty and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of Secured Parties, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

13. Ratification. Each Loan Party hereby restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement and the other Loan Documents effective as of the date hereof and as amended hereby.

14. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

*[Signature pages follow.]*

IN WITNESS WHEREOF, each of the undersigned has caused this Amendment to be duly executed and delivered by its proper and duly authorized officer as of the date set forth below.

**BORROWER:**

**APPIAN CORPORATION**

By: /s/ Mark Matheos

Name: Mark Matheos

Title: Chief Financial Officer

**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK**

By: /s/ Oliver Wynn  
Name: Oliver Wynn  
Title: Vice President

**LENDERS:**

**SILICON VALLEY BANK**, as Issuing Lender, Swingline Lender and as a Lender

By: /s/ Oliver Wynn  
Name: Oliver Wynn  
Title: Vice President

**WELLS FARGO BANK, N.A.**, as a Lender

By: /s/ Matthew Hootstein  
Name: Matthew Hootstein  
Title: Authorized Signatory

**COMERICA BANK**, as a Lender

By: /s/ Robert Muzquiz Jr.  
Name: Robert Muzquiz Jr.  
Title: Vice President

**MUFG BANK, LTD.**, as a Lender and as the New Lender

By: /s/ Marie Alava  
Name: Marie Alava  
Title: Director

**ANNEX A**

Conformed Credit Agreement



**SILICON VALLEY BANK**

Execution Version  
Conformed through First Amendment

**SENIOR SECURED CREDIT FACILITIES**

**CREDIT AGREEMENT**

dated as of November 3, 2022,

among

**APPIAN CORPORATION,**  
as the Borrower,

**THE SEVERAL LENDERS FROM TIME TO TIME PARTY HERETO,**

and

**SILICON VALLEY BANK,**  
as Administrative Agent, Issuing Lender and Swingline Lender, and Co-Documentation Agent

and

**WELLS FARGO BANK, N.A.,**  
as Co-Documentation Agent



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## CREDIT AGREEMENT

**THIS CREDIT AGREEMENT** (this “*Agreement*”), dated as of November 3, 2022, is entered into by and among **APIAN CORPORATION**, a Delaware corporation (the “*Borrower*”), the several banks and other financial institutions or entities from time to time party to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), **SILICON VALLEY BANK (“SVB”)**, as the Issuing Lender and the Swingline Lender, and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, together with any successors and assigns in such capacities, the “*Administrative Agent*”).

### RECITALS:

**WHEREAS**, the Borrower desires to obtain financing to refinance the Existing SVB Credit Facility, as well as for general corporate purpose, working capital financing, and letter of credit facilities;

**WHEREAS**, the Lenders have agreed to extend certain credit facilities to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate principal amount not to exceed \$150,000,000, consisting of a term loan facility in the aggregate principal amount of \$100,000,000, and a revolving loan facility in an aggregate principal amount of up to \$50,000,000 including a letter of credit sub-facility in the aggregate availability amount of \$15,000,000 (as a sublimit of the revolving loan facility); and a swingline sub-facility in the aggregate availability amount of \$10,000,000 (as a sublimit of the revolving loan facility);

**WHEREAS**, certain Lenders have agreed to extend to Borrower, on the First Amendment Effective Date, (a) Incremental Term Loans pursuant to Section 2.27 hereof in an aggregate original principal amount not to exceed \$20,000,000 (the “*First Amendment Term Loans*”), and (b) additional Revolving Commitments pursuant to Section 2.27 as set forth on Schedule 1.1A in an aggregate amount equal to \$10,000,000;

**WHEREAS**, immediately after the First Amendment Effective Date, (a) the aggregate outstanding principal amount of the Term Loans is \$120,000,000.00 (which shall include the Term Loans funded on the Closing Date and the First Amendment Term Loans and (b) the aggregate principal amount of the Revolving Commitment is \$60,000,000, including, as a sublimit under the Revolving Commitments, up to \$15,000,000 in Letters of Credit, and \$10,000,000 in Swingline Loans;

**WHEREAS**, the Borrower has agreed to secure all of its Obligations by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on substantially all of its assets subject to certain exclusions under the Loan Documents; and

**WHEREAS**, each of the Guarantors has agreed to guarantee the Obligations of the Borrower and to secure its respective Obligations in respect of such guarantee by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on substantially all of its assets subject to certain exclusions under the Loan Documents.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“**ABR**”: for any day, a rate per annum equal to the higher of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect for such day plus 0.50%; provided that in no event shall the ABR be deemed to be less than 1.50%. Any change in the ABR due to a change in the Prime

Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of the change in such rates.

“**ABR Loans**”: Loans, the rate of interest applicable to which is based upon the ABR.

“**Accommodation Payment**”: as defined in [Section 2.25\(1\)](#).

“**Acceptable Foreign Jurisdiction**”: the United Kingdom and Switzerland.

“**Adjusted Term SOFR**”: for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be equal to the Floor.

“**Administrative Agent**”: SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

“**Affected Financial Institution**”: (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affected Lender**”: as defined in [Section 2.23](#).

“**Affiliate**”: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

“**Agent Parties**”: as defined in [Section 10.2\(c\)\(ii\)](#).

“**Aggregate Exposure**”: with respect to any Lender at any time, an amount equal to the sum of (a) without duplication of clause (b), the aggregate then unpaid principal amount of such Lender’s Term Loans, (b) without duplication of clause (a), the aggregate amount of such Lender’s Term Loan Commitments then in effect, (c) the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding, and (d) without duplication of clause (c), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

“**Aggregate Exposure Percentage**”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“**Agreement**”: as defined in the preamble hereto.

“**Agreement Currency**”: as defined in [Section 10.19](#).

“**Allocable Amount**”: as defined in [Section 2.25\(1\)](#).

“**Anti-Money Laundering Laws**”: the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

“**Appian Switzerland**”: Appian Software International LLC.

“**Appian UK**”: Appian Europe Limited (U.K.).

“**Appian UK Stock Pledge Agreement**”: an executed English law governed share charge granted by the Borrower in respect of 100% of the issued and outstanding shares of Capital Stock (voting and non-voting) held by it in Appian UK, in form and substance reasonably satisfactory to the Administrative Agent.

“**Applicable Foreign Obligor Documents**”: is defined in Section 4.31(a).

“**Applicable Margin**”: (i) from the Closing Date through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending June 30, 2023, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), the rates per annum corresponding to Level 1 in the tables below, (ii) commencing on the day after the date for which the consolidated financial statements of the Group Members ending on June 30, 2023 and the accompanying Compliance Certificate in respect thereof are delivered through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending December 31, 2023, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b) (the “**Floating Rate Trigger Date**”), the rates per annum corresponding to Level 2 in the tables below; **provided** that, if the financial statements and Compliance Certificate most recently delivered during this period demonstrates that the Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio is greater than 0.60x the rates per annum corresponding to Level 1 in the tables below shall apply and (iii) commencing on the first day after the Floating Rate Trigger Date, “**Applicable Margin**” shall mean the rate per annum set forth under the relevant column heading below:

From the Closing Date through the Cash Flow Trigger Date:

Category	Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio	SOFR Applicable Margin	ABR Applicable Margin
1	> 0.60x	3.50%	2.50%
2	≤ 0.60x but >0.55x	3.25%	2.25%
3	≤ 0.55x but >0.50x	3.00%	2.00%
4	≤ 0.50x but > 0.45x	2.75%	1.75%
5	≤ 0.45x	2.50%	1.50%

From and after the Cash Flow Trigger Date

Category	Maximum Consolidated Total Leverage Ratio	SOFR Applicable Margin	ABR Applicable Margin
1	> 3.50x	3.50%	2.50%
2	≤ 3.50x but > 3.00x	3.00%	2.00%
3	≤ 3.00 but > 2.00x	2.50%	1.50%
4	≤ 2.00x but > 1.00x	2.00%	1.00%
5	≤ 1.00x	1.50%	0.50%

Notwithstanding the foregoing, (a) if the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of the Group Members, the Applicable Margin shall be the rates corresponding to Level 1 in the foregoing tables until such financial statements and



Compliance Certificate are delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

**“Application”**: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

**“Approved Fund”**: any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“Asset Sale”**: any Disposition of property or series of related Dispositions of property (excluding any such Disposition of property permitted by clauses (a) through (m) and clause (o) of Section 7.5) that yields gross proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of \$2,500,000.

**“Assignment and Assumption”**: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

**“Available Revolving Commitment”**: at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time, minus (b) the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit at such time, minus (c) the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time, minus (d) the aggregate principal balance of any Revolving Loans and Swingline Loans outstanding at such time.

**“Available Tenor”**: as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.17(b)(iv).

**“Bail-In Action”**: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

**“Bail-In Legislation”**: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In

Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other Insolvency Proceedings).

**“Bankruptcy Code”**: Title 11 of the United States Code entitled “Bankruptcy.”

**“Basel III”**: (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: a global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; (b) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

**“Benchmark”**: initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(b)(i).

**“Benchmark Replacement”**: with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Adjustment”**: with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Date”**: the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the

date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**”: the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**”: the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b).

“**Beneficial Ownership Certification**”: a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published

jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

**“Beneficial Ownership Regulation”**: United States 31 C.F.R. § 1010.230.

**“Benefit Plan”**: any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**“Benefitted Lender”**: as defined in [Section 10.7\(a\)](#).

**“Blocked Person”**: as defined in [Section 7.22](#).

**“Board”**: the Board of Governors of the Federal Reserve System of the United States (or any successor).

**“Borrower”**: as defined in the preamble hereto.

**“Borrowing”**: a borrowing consisting of simultaneous Loans of the same Type and, in the case of a SOFR Borrowing, having the same Interest Period made by the Lenders.

**“Borrowing Date”**: any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

**“Business”**: as defined in [Section 4.17\(b\)](#).

**“Business Day”**: a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York or the State of California are authorized or required by law to close.

**“Capital Lease Obligations”**: as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP; provided, that for all purposes hereunder, any obligations of such Person that would have been treated as operating leases in accordance with Accounting Standards Codification 840 (regardless of whether or not then in effect) shall be treated as operating leases for purposes of all financial definitions, calculations and covenants, without giving effect to Accounting Standards Codification 842 requiring operating leases to be recharacterized or treated as capital leases.

**“Capital Stock”**: with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

**“Cash Collateralize”**: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other credit support, in an amount equal to 105%

(110% in the case of any Letter of Credit in a currency other than Dollars) of the aggregate Dollar Equivalent amount of L/C Exposure, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Lender; (b) with respect to Obligations arising under any Cash Management Agreement in connection with Cash Management Services, the applicable Cash Management Bank, for its own or any of its applicable Affiliate's benefit, as provider of such Cash Management Services, cash or deposit account balances or, if the Administrative Agent and the applicable Cash Management Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Cash Management Bank; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or deposit account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. "**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"**Cash Equivalents**": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six (6) months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six (6) months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six (6) months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"**Cash Flow Trigger Date**": November 3, 2025.

"**Cash Management Agreement**": as defined in the definition of "Cash Management Services."

"**Cash Management Bank**": any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"**Cash Management Services**": cash management and other services provided to one or more of the Loan Parties by a Cash Management Bank which may include treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system), merchant services, direct deposit of payroll, business credit card (including so-called "purchase cards", "procurement cards" or "p-cards"), credit card processing services, debit cards, stored value cards, and check cashing services identified in such Cash Management Bank's various cash management services or other similar agreements (each, a "**Cash Management Agreement**").

“**Casualty Event**”: any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

“**Certificated Securities**”: as defined in Section 4.19(a).

“**Change of Control**”: (a) the Permitted Investor shall cease to have the power to vote or direct the voting of securities having at least 50.1% of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (b) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), excluding the Permitted Investor, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of a percentage of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis) greater than 40% or more of the ordinary voting power for the election of directors of the Borrower (determined on a fully diluted basis); (c) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (disregarding individuals who cease to serve due to death or disability) (i) who were members of that board or equivalent governing body on the first (1<sup>st</sup>) day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (d) at any time, the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each Guarantor and Appian UK and Appian Switzerland free and clear of all Liens other than Liens permitted by Section 7.3, or Appian UK shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of Appian Switzerland free and clear of all Liens other than Liens permitted by Sections 7.3.

“**Closing Date**”: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders or the Required Lenders.

“**Code**”: the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“**Collateral Information Certificate**”: the Collateral Information Certificate to be executed and delivered by the Borrower and each other Loan Party pursuant to Section 5.1.

“**Collateral-Related Expenses**”: all reasonable, documented, out-of-pocket costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent and its agents and counsel, and reimbursement for all other reasonable and documented costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“**Commitment**”: as to any Lender, the sum of its Term Loan Commitment and its Revolving Commitment.

“**Commitment Fee Rate**”: (i) from the Closing Date through the date on which the Administrative Agent receives copies of the consolidated financial statements of the Group Members in respect of the fiscal quarter of the Group Members ending June 30, 2023, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), the rate per annum corresponding to Level 1 in the table below, (ii) commencing on the day after the date for which the consolidated financial statements of the Group Members ending on June 30, 2023 and the accompanying Compliance Certificate

in respect thereof are delivered through the Floating Rate Trigger Date, the rate per annum corresponding to Level 2 in the table below; provided that, if the financial statements and Compliance Certificate delivered at any time during this period demonstrates that the Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio is greater than 0.60x the rate per annum corresponding to Level 1 in the table below shall apply and (iii) commencing on the first day after the Floating Rate Trigger Date, “**Commitment Fee Rate**” shall mean the rate per annum set forth under the relevant column heading below:

From the Closing Date through the Cash Flow Trigger Date:

Category	Maximum Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio	Unused Line Fee Margin
1	> 0.60x	0.35%
2	≤ 0.60x but >0.55x	0.35%
3	≤ 0.55x but >0.50x	0.30%
4	≤ 0.50x but > 0.45x	0.25%
5	≤ 0.45x	0.25%

From and after the Cash Flow Trigger Date

Category	Maximum Consolidated Total Leverage Ratio	Unused Line Fee Margin
1	> 3.50x	0.35%
2	≤ 3.50x but > 3.00x	0.35%
3	≤ 3.00 but > 2.00x	0.30%
4	≤ 2.00x but > 1.00x	0.25%
5	≤ 1.00x	0.25%

If the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of the Group Members, the Commitment Fee Rate shall be the rates corresponding to Level 1 in the foregoing table until such financial statements and Compliance Certificate are delivered, and (c) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio or Consolidated Total Leverage Ratio, as applicable, would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

“**Commodity Exchange Act**”: the Commodity Exchange Act (7 U.S.C. Section 1 *et seq.*), as amended from time to time, and any successor statute.

“**Communications**”: as defined in Section 10.2(c)(ii).

“**Compliance Certificate**”: a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B.

“**Conforming Changes**”: with respect to either the use or administration of any Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Connection Income Taxes**”: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Capital Expenditures**”: for any period, with respect to the Group Members, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Group Members) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of the Group Members; provided that, “Consolidated Capital Expenditures” shall not include (a) expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (b) expenditures made as a tenant as leasehold improvements during such period to the extent reimbursed by the landlord during such period, (c) the trade in of equipment or (d) expenditures to the extent, pursuant to a written agreement, such expenditures are reimbursed (or reimbursable and reasonably expected to be received in cash within one hundred twenty (120) days of the last day of such period), by Persons other than the Group Members.

“**Consolidated Adjusted EBITDA**”: with respect to the Group Members for any period, (a) Consolidated Net Income, plus (b) to the extent deducted in the calculation of Consolidated Net Income, (i) Consolidated Interest Expense, (ii) income tax expense, (iii) depreciation expense and amortization expense, (iv) stock-based compensation expense, (v) net foreign currency gains/(losses), and (vi) any unusual or non-recurring fees, expenses and charges including any fees, expenses and charges related to, arising out of or made in connection with any settlements, legal proceedings, investigations and regulatory matters (provided that the aggregate amount of fees and expenses and non-recurring charges added pursuant to this clause (vi) shall not exceed 15% of Consolidated Adjusted EBITDA (calculated prior to giving effect to such clause (vi) for such period)), plus (c) any increase in Short Term Deferred Revenue from the immediately preceding period, minus (d) any decrease in Short Term Deferred Revenue from the immediately preceding period, minus (e) capitalized software development costs for such period, minus (f) commissions to the extent capitalized in such period; provided that Consolidated Adjusted EBITDA for any period shall be determined on a Pro Forma Basis (in a manner reasonably acceptable to the Administrative Agent) to give effect to any Permitted Acquisitions or any disposition of any business or assets consummated during such period, in each case as if such transaction occurred on the first (1<sup>st</sup>) day of such period and in accordance with Regulation S-X promulgated by the SEC.



**“Consolidated Fixed Charge Coverage Ratio”**: with respect to the Group Members for any period, the ratio of (a) the sum of (i) Consolidated Adjusted EBITDA for such period minus (ii) the portion of taxes based on income actually paid in cash (net of any cash refunds received) during such period (including for purposes hereof, tax distributions made during such period minus (iii) Consolidated Capital Expenditures (excluding the principal amount funded with the Loans) incurred in connection with such expenditures) minus (iv) cash dividends, distributions and management fees paid to any Person that is not a Loan Party during such period, minus (v) obligations in respect of earn-outs paid or accrued as a liability in accordance with GAAP during such period to (b) Consolidated Fixed Charges for such period.

**“Consolidated Fixed Charges”**: with respect to the Group Members for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, plus (b) scheduled payments made during such period on account of principal of Indebtedness of the Group Members (including scheduled principal payments in respect of the Term Loans).

**“Consolidated Interest Expense”**: for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any credit extension and other Indebtedness of the Group Members, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

**“Consolidated Net Income”**: shall mean, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of the Group Members for such period taken as a single accounting period.

**“Consolidated Total Indebtedness”**: at any date, the aggregate principal amount of all Indebtedness of the Group Members at such date, determined on a consolidated basis in accordance with GAAP, but excluding any liabilities referred to in clauses (f) and (h) of the definition of “Indebtedness.”

**“Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio”**: as of any date, the ratio of (a) Consolidated Total Indebtedness of the Group Members as of such date to (b) the product of the sum of Recurring Revenue for the prior three (3) month period ended as of any such test period multiplied by four (4).

**“Consolidated Total Leverage Ratio”**: as at the last day of any period, the ratio of (a) Consolidated Total Indebtedness on such day, to (b) Consolidated Adjusted EBITDA for such period.

**“Contractual Obligation”**: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”**: the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Agreement”**: any account control agreement in form and substance reasonably satisfactory to the Administrative Agent entered into among the depository institution at which a Loan Party maintains a Deposit Account or the securities intermediary at which a Loan Party maintains a Securities Account, such Loan Party, and the Administrative Agent pursuant to which the Administrative Agent obtains control (within the meaning of the UCC or any other applicable law) over such Deposit Account or Securities Account.

**“Controlled Account”**: each Deposit Account and Securities Account that is subject to a Control Agreement in form and substance satisfactory to the Administrative Agent and the Issuing Lender.

**“Control Investment Affiliate”**: as to any Person, any other Person that (a) directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies.

**“Corresponding Tenor”**: with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Daily Simple SOFR”**: for any day (a **“SOFR Rate Day”**), a rate per annum equal to the greater of (a) SOFR for the day (such day a **“SOFR Determination Day”**) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

**“Data Protection Laws”** is all applicable laws, in any jurisdiction worldwide, that govern (i) the confidentiality, processing, privacy, security, protection, transfer or trans-border data flow of Personal Data, or (ii) electronic data privacy.

**“Debtor Relief Laws”**: the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**“Declined Amount”**: as defined in Section 2.12(e).

**“Default”**: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**“Default Rate”**: as defined in Section 2.15(c).

**“Defaulting Lender”**: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a

Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) become the subject of a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

**“Deposit Account”**: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Deposit Account Control Agreement”**: any Control Agreement entered into by the Administrative Agent, a Loan Party and a financial institution holding a Deposit Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Deposit Account.

**“Designated Jurisdiction”**: any country, region or territory to the extent that such country, region or territory itself is the subject of any Sanction.

**“Determination Date”**: as defined in the definition of “Pro Forma Basis”.

**“Discharge of Obligations”**: subject to Section 10.8, the satisfaction of the Obligations (including all such Obligations relating to Cash Management Services) by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank or Qualified Counterparty) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Cash Management Services, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations under or in respect of Specified Swap Agreements and Cash Management Services, to the extent (a) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank), (c) no Obligations in respect of any Cash Management Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Cash Management Services have been Cash Collateralized in accordance with the terms hereof), and (d) the aggregate Commitments of the Lenders are terminated.

**“Disposition”**: with respect to any property (including, without limitation, Capital Stock of any Group Member), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer, encumbrance or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) and any issuance of Capital Stock of any Group Member. The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings.

**“Disqualified Stock”**: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund

obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Group Members may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

**“Division”**: in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Company Act, or any analogous action taken pursuant to any other applicable Requirements of Law.

**“Dollars”** and **“\$”**: dollars in lawful currency of the United States.

**“Dollar Equivalent”** is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a currency other than Dollars, the equivalent amount therefor in Dollars as determined by the Administrative Agent and Issuing Lender at such time on the basis of the Spot Rate for the purchase of Dollars with such currency.

**“Domestic Subsidiary”**: any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States.

**“EEA Financial Institution”**: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”**: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”**: any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Election Period”**: as defined in Section 2.27(c).

**“Eligible Assignee”**: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

**“Environmental Laws”**: any and all foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

**“Environmental Liability”**: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Group Member directly or indirectly resulting from or based upon (a) a violation of an Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the release or threatened release of any Materials of Environmental Concern into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**ERISA**”: the Employee Retirement Income Security Act of 1974, as amended, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“**ERISA Affiliate**”: each business or entity which is, or within the last six years was, a member of a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c), (m) or (n) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

“**ERISA Event**”: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Loan Party or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Group Member may be directly or indirectly liable; (m) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Loan Party or any ERISA Affiliate thereof may be directly or indirectly liable; (n) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (o) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Group Member in connection with any such Plan; (p) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to qualify for exemption from taxation under Section 501(a) of the Code; (q) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; (r) noncompliance with any requirement of Section 409A or 457 of the Code; or (s) the establishment or amendment by any Group Member of any “welfare plan” as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that could be reasonably likely to materially increase the liability of any Group Member.

**“ERISA Funding Rules”**: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

**“Erroneous Payment”**: as defined in Section 9.15(a).

**“Erroneous Payment Deficiency Assignment”**: as defined in Section 9.15(d).

**“Erroneous Payment Impacted Class”**: as defined in Section 9.15(d).

**“Erroneous Payment Return Deficiency”**: as defined in Section 9.15(d).

**“Erroneous Payment Subrogation Rights”**: as defined in Section 9.15(d).

**“EU Bail-In Legislation Schedule”**: the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

**“Event of Default”**: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**“Exchange Act”**: the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

**“Excluded Account”**: any Deposit Account or Securities Account that is (a) a zero balance account, (b) for funding withholding tax, trust, escrow, payroll, customer funds, workers’ compensation claims, employee stock purchase plans, 401(k) benefits, health care benefits, retirement benefits, other employee benefits or other fiduciary account, or similar operational disbursement account, and (c) petty cash accounts and other deposit accounts with balances which shall not at any time exceed \$100,000 individually or \$1,000,000 in the aggregate for all such accounts.

**“Excluded Foreign Subsidiary”**: any Foreign Subsidiary that (a) does not own any Capital Stock of any Subsidiary that is a Loan Party, (b) does not own any material Intellectual Property and (c) as of the last day of each fiscal quarter and at any other date of determination does not (A) hold assets (which shall exclude for the avoidance of doubt assets in the form of intercompany investments in other Group Members) representing 5% (7% in the case of Appian Software Germany GmbH) or more of the Borrower’s consolidated total tangible assets individually or 12.5% or more in the aggregate with all other Excluded Foreign Subsidiaries as of such date (determined in accordance with GAAP) or (B) generate more than 5% individually or in the aggregate with all other such Excluded Foreign Subsidiaries other than with respect to Appian Switzerland (or in the case of Appian Switzerland, 40% individually or in the aggregate with all such other Excluded Foreign Subsidiaries) of the Borrower’s consolidated total revenues determined in accordance with GAAP for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1(b). If, as of the last day of each fiscal quarter and at any other date of determination, any Excluded Foreign Subsidiary (A) shall hold assets (which shall exclude for the avoidance of doubt assets in the form of intercompany investments in other Group Members) representing 5% (7% in the case of Appian Software Germany GmbH) or more of the Borrower’s consolidated total tangible assets individually or 12.5% or more in the aggregate with all other Excluded Foreign Subsidiaries as of such date (determined in accordance with GAAP) or (B) has generated more than 5% individually or in the aggregate with all other such Excluded Foreign Subsidiaries other than with respect to Appian Switzerland (or in the case of Appian Switzerland, 40% individually or in the aggregate with all such other Excluded Foreign Subsidiaries) of the Borrower’s consolidated total revenues determined in accordance with GAAP for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1(b), then unless waived by the Administrative Agent in its sole discretion (other than if such Subsidiary is organized under the laws of an Acceptable Foreign Jurisdiction and such Subsidiary is requested to be joined as a Loan Party by the Required Lenders), Borrower will cause such Excluded Foreign Subsidiary

or such Excluded Foreign Subsidiaries to become Loan Parties pursuant to Section 6.12 and provide local law governed security documents such that the forgoing test is satisfied. For the avoidance of doubt, no Excluded Foreign Subsidiary shall own (1) any Capital Stock of any Subsidiary that is a Loan Party, (2) or any material Intellectual Property. No Borrower or Guarantor shall be permitted to be designated as an Excluded Foreign Subsidiary.

**“Excluded Swap Obligations”**: with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee Obligation of such Guarantor with respect to, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time such Guarantee Obligation of such Guarantor, or the grant by such Guarantor of such Lien, becomes effective with respect to such Swap Obligation. If such a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee Obligation or Lien is or becomes excluded in accordance with the first sentence of this definition.

**“Excluded Taxes”**: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.20(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Existing Letters of Credit”**: the letters of credit described on Schedule 1.1B.

**“Existing SVB Credit Facility”**: the credit facility governed by that certain Third Amended and Restated Loan and Security Agreement dated as of November 1, 2017, by and between the Borrower and SVB, as amended and in effect immediately prior to the Closing Date.

**“Facility”**: each of (a) the Term Loan Facility, (b) the L/C Facility (which is a sub-facility of the Revolving Facility), (c) the Swingline Facility (which is a sub-facility of the Revolving Facility) and (d) the Revolving Facility.

**“FASB ASC”**: the Accounting Standards certification of the Financial Accounting Standards Board.

**“FATCA”**: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**“Federal Funds Effective Rate”**: for any day, the greater of (a) 0.00% and (b) the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

“**Fee Letter**”: the letter agreement dated September 22, 2022, between the Borrower and the Administrative Agent.

“**First Amendment**”: the Joinder and First Amendment to Credit Agreement dated as of December 13, 2022 by and among the Loan Parties, the Administrative Agent, and the Lenders party thereto.

“**First Amendment Effective Date**”: December 13, 2022.

“**First Amendment Fee Letter**”: the letter agreement dated the First Amendment Effective Date among Borrower and the Administrative Agent.

“**First Amendment Term Loan**”: as defined in the First Amendment.

“**First Amendment Term Loan Commitment**”: as to any Lender, the obligation of such Lender, if any, to make First Amendment Term Loans to Borrower on the First Amendment Effective Date.

“**Floating Rate Trigger Date**”: as defined in the definition of “Applicable Margin”.

“**Flood Laws**”: the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

“**Floor**”: a rate of interest equal to 0.50% per annum.

“**Foreclosed Borrower**”: as defined in Section 2.25.

“**Foreign Currency**”: Australian Dollars.

“**Foreign Lender**”: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“**Foreign Obligor**”: is any Loan Party which is organized in a jurisdiction other than the United States.

“**Foreign Subsidiary**”: any Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**Fronting Exposure**”: at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender’s L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“**Fund**”: any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“**Funding Office**”: the Revolving Loan Funding Office or the Term Loan Funding Office, as the context requires.

“**GAAP**”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any “**Accounting Change**” (as defined below) shall occur and such change results in a change in the method of calculation of financial



covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "**Accounting Changes**" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC, or the adoption of IFRS.

"**GDPR**": the EU General Data Protection Regulation EU/2016/679 and any laws implementing or supplementing the GDPR.

"**Governmental Approval**": any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**": the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any group or body charged with setting accounting or regulatory capital rules or standards (including the Financial Standards Board, the Bank for International Settlements, the Basel Committee on Banking Supervision and any successor or similar authority to any of the foregoing).

"**Group Members**": the collective reference to the Borrower and its Subsidiaries.

"**Guarantee and Collateral Agreement**": the Guarantee and Collateral Agreement to be executed and delivered by the Loan Parties, substantially in the form of Exhibit A.

"**Guarantee Obligation**": as to any Person (the "**guaranteeing person**"), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the "**primary obligations**") of any other third Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"**Guarantors**": a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the requirements of Section 6.12 hereof (and the definition of "Excluded Foreign Subsidiary") and the Guarantee and Collateral Agreement.

“**IFRS**”: international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“**Illegality Notice**”: as defined in Section 2.19.

“**Increase Effective Date**”: as defined in Section 2.27(d).

“**Incremental Term Loan**”: as defined in Section 2.27(a).

“**Incremental Revolving Commitment**”: as defined in Section 2.27(b).

“**Incurred**”: as defined in the definition of “Pro Forma Basis”.

“**Indebtedness**”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

“**Indemnified Taxes**”: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Indemnitee**”: as defined in Section 10.5(b).

“**Insolvency Proceeding**”: (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case undertaken under U.S. federal, state or foreign law, including any Debtor Relief Law.

“**Intellectual Property**”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**“Intellectual Property Security Agreement”**: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto delivered pursuant to Section 6.12, in each case as amended, restated, supplemented or otherwise modified from time to time.

**“Interest Payment Date”**: (a) as to any ABR Loan (including any Swingline Loan), the first (1<sup>st</sup>) Business Day of each fiscal quarter to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any SOFR Loan, (i) having an Interest Period of three (3) months or less, the last Business Day of such Interest Period and the final maturity date of such Loan and (ii) having an Interest Period longer than three (3) months, each Business Day that is three (3) months after the first (1<sup>st</sup>) day of such Interest Period, the last Business Day of such Interest Period and the final maturity date of such Loan, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

**“Interest Period”**: as to any SOFR Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such SOFR Loan and ending on the numerically corresponding day in the month that is one (1), three (3) or six (6) months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such SOFR Loan and ending on the numerically corresponding day in the month that is one (1), three (3) or six (6) months thereafter, as selected by the Borrower in a Notice of Conversion/Continuation delivered to the Administrative Agent not later than 10:00 A.M. on the date that is three (3) U.S. Government Securities Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date (in the case of Revolving Facility) or beyond the Term Loan Maturity Date (in the case of Term Loans);

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) no tenor that has been removed from this definition pursuant to Section 2.17(b) shall be available for specification in any Notice of Borrowing or Notice of Conversion/Continuation.

**“Interest Rate Agreement”**: any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with the Group Members’ operations, and (b) not for speculative purposes.

**“Inventory”**: all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Loan Party for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Loan Party’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

**“Investments”**: as defined in Section 7.7.

**“IRS”**: the Internal Revenue Service, or any successor thereto.

“**ISP**”: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“**Issuing Lender**”: as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit (including, without limitation, each Existing Letter of Credit), and (b) any other Lender that may become an Issuing Lender pursuant to Section 3.11 or 3.12, with respect to Letters of Credit issued by such Lender. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

“**Issuing Lender Fees**”: as defined in Section 3.3(a).

“**Judgment Currency**”: as defined in Section 10.19.

“**L/C Advance**”: each L/C Lender’s funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

“**L/C Commitment**”: as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lenders’ obligations and rights under and in respect of each Letter of Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to Section 3.5(b)) in an aggregate Dollar Equivalent principal amount not to exceed the amount set forth under the heading “L/C Commitment” opposite such L/C Lender’s name on Schedule 1.1A or in the Assignment and Assumption pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

“**L/C Disbursements**”: a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

“**L/C Exposure**”: at any time, the sum of (a) the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit at such time, and (b) the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

“**L/C Facility**”: the L/C Commitments and the extensions of credit made thereunder.

“**L/C Fee Payment Date**”: as defined in Section 3.3(a).

“**L/C Lender**”: a Lender with an L/C Commitment.

“**L/C Percentage**”: as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender’s L/C Commitment, as such percentage may be adjusted as provided in Section 2.24.

“**L/C-Related Documents**”: collectively, each Letter of Credit (including any Existing Letter of Credit), all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender’s standard form documents for letter of credit issuances.

“**Lenders**”: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the L/C Lenders, the Issuing Lender and the Swingline Lender.

“**Letter of Credit**”: as defined in Section 3.1(a); provided that such term shall include each Existing Letter of Credit.

“**Letter of Credit Availability Period**”: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

“**Letter of Credit Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Fronting Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Maturity Date**”: the date occurring fifteen (15) days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“**Lien**”: any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**”: at any time, the sum of (a) Qualified Cash, and (b) the Available Revolving Commitment at such time.

“**Loan**”: any loan made or maintained by any Lender pursuant to this Agreement.

“**Loan Documents**”: this Agreement, each Security Document, each Note, the Fee Letter, each Assignment and Assumption, each Compliance Certificate, each Notice of Borrowing, each Notice of Conversion/Continuation, the Solvency Certificate, the Collateral Information Certificate, each L/C-Related Document, each subordination agreement or intercreditor agreement entered into pursuant to this Agreement, and any agreement creating or perfecting rights in cash collateral pursuant to the provisions of Section 3.10, or otherwise, and any amendment, waiver, supplement or other modification to any of the foregoing.

“**Loan Parties**”: each Group Member that is a party to a Loan Document, as a Borrower or a Guarantor.

“**Mandatory Prepayment Date**”: as defined in Section 2.12(e).

“**Material Adverse Effect**”: (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of the Group Members, taken as a whole; (b) a material impairment of the rights and remedies, taken as a whole, of the Administrative Agent and the Lenders under any Loan Document, or of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document to which it is a party, including a material impairment in the perfection or priority of the Administrative Agent’s Lien in any material Collateral or in the value of such Collateral.

“**Materials of Environmental Concern**”: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity, radiofrequency radiation at levels known to be hazardous to human health and safety.

“**MFN Protection**”: as defined in Section 2.27(h)(ii).

“**Minority Lender**”: as defined in Section 10.1(b).

“**Moody’s**”: Moody’s Investors Service, Inc.

**“Mortgaged Properties”**: the real properties as to which, pursuant to Section 6.12(b) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

**“Mortgages”**: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

**“Multiemployer Plan”**: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has ever been obligated to make, contributions.

**“Net Cash Proceeds”**: (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document) and other customary costs, fees and expenses actually incurred in connection therewith and net of taxes paid and the Borrower’s reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by any Group Member in connection with such Asset Sale or Recovery Event in the taxable year that such Asset Sale or Recovery Event is consummated, the computation of which shall, in each such case, take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary costs, fees and expenses actually incurred in connection therewith.

**“Non-Consenting Lender”**: any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

**“Non-Defaulting Lender”**: at any time, each Lender that is not a Defaulting Lender at such time.

**“Note”**: a Term Loan Note, a Revolving Loan Note or a Swingline Loan Note.

**“Notice of Borrowing”**: a notice substantially in the form of Exhibit J.

**“Notice of Conversion/Continuation”**: a notice substantially in the form of Exhibit K.

**“Obligations”**: (a) the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of the Loan Parties (and the other Group Members in the case of obligations in respect of Cash Management Services) to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, and any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Cash Management Agreement, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations,

fees, indemnities, costs, expenses (including all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, to the extent that any applicable Cash Management Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty) that are required to be paid by any Group Member pursuant any Loan Document, Cash Management Agreement, Specified Swap Agreement or otherwise and (b) Erroneous Payment Subrogation Rights. For the avoidance of doubt, the Obligations shall not include (i) any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender, or (ii) solely with respect to any Guarantor that is not a Qualified ECP Guarantor, any Excluded Swap Obligations of such Guarantor.

“**OFAC**”: the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

“**Operating Documents**”: for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof), and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Other Connection Taxes**”: with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to [Section 2.23](#)).

“**Participant**”: as defined in [Section 10.6\(d\)](#).

“**Participant Register**”: as defined in [Section 10.6\(d\)](#).

“**Patriot Act**”: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“**Payment Recipient**”: as defined in [Section 9.15\(a\)](#).

“**PBGC**”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“**Pension Plan**”: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (b) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“**Periodic Term SOFR Determination Day**”: as defined in the definition of “Term SOFR”.

“**Permitted Acquisition**”: as defined in [Section 7.7\(n\)](#).

“**Permitted Investor**”: the collective reference to Matthew Calkins and any Controlled Investment Affiliate of Matthew Calkins.

“**Permitted Litigation Financing**”: any financing transaction or series of financing transactions that may be entered into by the Borrower secured by a Lien on the Qualified Litigation Rights or pursuant to which the Borrower may sell, convey or otherwise transfer to any Person or may grant a security interest in any Qualified Litigation Rights and the proceeds of such Qualified Litigation Rights.

“**Person**”: any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Personal Data**”: (a) any information or data that, alone or together with any other information or data (i) can be used to identify, directly or indirectly, an individual, or (ii) can be used to authenticate such individual; and (b) any other information pertaining to an individual that is regulated or protected by one or more of the Data Protection Laws.

“**Plan**”: (a) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by any Group Member or to which any Group Member has ever made, or was obligated to make, contributions, (b) a Pension Plan, or (c) a Qualified Plan.

“**Plan Asset Regulations**”: 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, as amended from time to time.

“**Platform**”: any of Debt Domain, DebtX, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“**Preferred Stock**”: the preferred Capital Stock of the Borrower.

“**Prime Rate**”: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors).

“**Pro Forma Basis**”: with respect to any calculation or determination for any period, in making such calculation or determination on the specified date of determination (the “**Determination Date**”):

(a) pro forma effect will be given to any Indebtedness incurred by the Group Members (including by assumption of then outstanding Indebtedness or by a Person becoming a Subsidiary) (“**Incurred**”) after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first (1<sup>st</sup>) day of such period;

(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period;

(c) Consolidated Fixed Charges related to any Indebtedness no longer outstanding or to be repaid or redeemed on the Determination Date, except for Consolidated Interest Expense accrued during the reference period under a revolving credit to the extent of the commitment thereunder (or under any successor revolving credit) in effect on the Determination Date, will be excluded as if such Indebtedness was no longer outstanding or was repaid or redeemed on the first (1<sup>st</sup>) day of such period;



(d) pro forma effect will be given to: (A) the acquisition or disposition of companies, divisions or lines of businesses by the Group Members, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; and (B) the discontinuation of any discontinued operations but, in the case of Consolidated Fixed Charges, only to the extent that the obligations giving rise to Consolidated Fixed Charges will not be obligations of the Group Members following the Determination Date; in each case of clauses (A) and (B), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first (1<sup>st</sup>) day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of the Borrower in accordance with Regulation S-X under the Securities Act based upon the most recent four full fiscal quarters for which the relevant financial information is available.

**“Pro Forma Financial Statements”**: balance sheets, income statements and cash flow statements prepared by the Group Members that give effect (as if such events had occurred on such date) to (a) the Loans to be made on the Closing Date and the use of proceeds thereof and (c) the payment of fees and expenses in connection with the foregoing, in each case prepared for (y) the most recently ended fiscal quarter as if such transactions had occurred on such date and (z) on a quarterly basis through the first full fiscal year after the Closing Date, and on an annual basis for each fiscal year thereafter through the Term Loan Maturity Date, in each case demonstrating pro forma compliance with the covenants set forth in Section 7.1.

**“Projections”**: as defined in Section 6.2(c).

**“Properties”**: as defined in Section 4.17(a).

**“PTE”**: a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“Qualified Cash”**: as of any date of determination, unrestricted cash or Cash Equivalents of the Loan Parties that are deposited in an account that are deposit accounts or securities accounts; provided that, as of any date of determination from and after the sixtieth (60<sup>th</sup>) day after the Closing Date (or such later date as may be agreed by Administrative Agent in its sole discretion), Qualified Cash shall be the aggregate amount of unrestricted cash and Cash Equivalents held at such time by any Loan Party in a Deposit Account or a Securities Account (i) maintained with SVB or, (ii) otherwise, that is subject to a Control Agreement in favor of the Administrative Agent; provided further, for the avoidance of doubt, for purposes of calculating Qualified Cash, Deposit Accounts and Securities Accounts maintained with Affiliates of SVB shall not be included unless such accounts are subject to a Control Agreement in favor of the Administrative Agent.

**“Qualified Counterparty”**: with respect to any Specified Swap Agreement, any counterparty thereto that is a Lender or an Affiliate of a Lender or, at the time such Specified Swap Agreement was entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

**“Qualified ECP Guarantor”**: in respect of any Swap Obligation, (a) each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee Obligation of such Guarantor provided in respect of, or the Lien granted by such Guarantor to secure, such Swap Obligation (or guaranty thereof) becomes effective with respect to such Swap Obligation, and (b) any other Guarantor that (i) constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder, or (ii) can cause another Person (including, for the avoidance of doubt, any other Guarantor not then constituting a “Qualified ECP Guarantor”) to qualify as an “eligible contract participant” at such time by entering into a “keepwell, support, or other agreement” as contemplated by Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**“Qualified Litigation Rights”**: any claims or other rights of the Borrower pursuant to or related to the \$2.036 billion judgment in the case Appian Corp. v. Pegasystems Inc. & Youyong Zou, No. 2020-07216 (Fairfax Cty. Ct.).

**“Qualified Plan”**: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (b) that is intended to be tax-qualified under Section 401(a) of the Code.

**“Recipient”**: the (a) Administrative Agent, (b) any Lender or (c) the Issuing Lender, as applicable.

**“Recovery Event”**: any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member.

**“Recurring Revenue”**: with respect to any period, the sum of, without duplication, subscription revenue of the Group Members determined in accordance with GAAP attributable to licenses, SaaS, subscriptions earned during the three month period pursuant to binding, written agreements which arise in the ordinary course of the Loan Parties’ Business, excluding for the avoidance of doubt, any Recurring Revenues attributable from “Maintenance and Support” subscriptions or services, “Term License Subscriptions” and other ‘on-premises’ services or subscriptions; provided that Recurring Revenue for the fiscal quarter ended (a) June 30, 2022 shall be deemed to be \$57,083,000.

**“Refunded Swingline Loans”**: as defined in Section 2.7(b).

**“Register”**: as defined in Section 10.6(c).

**“Regulation D”**: Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation T”**: Regulation T of the Board as in effect from time to time.

**“Regulation U”**: Regulation U of the Board as in effect from time to time.

**“Regulation X”**: Regulation X of the Board as in effect from time to time.

**“Reinvestment Deferred Amount”**: with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by any Loan Party in connection therewith that are not applied to prepay the Loans or other amounts pursuant to Section 2.12(e) as a result of the delivery of a Reinvestment Notice.

**“Reinvestment Event”**: any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

**“Reinvestment Notice”**: a written notice executed by a Responsible Officer stating that no Event of Default has occurred and that the Borrower (directly or indirectly through a Guarantor) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair assets useful in its business.

**“Reinvestment Prepayment Amount”**: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire or repair assets useful in the Borrower’s business.

**“Reinvestment Prepayment Date”**: with respect to any Reinvestment Event, the earlier of (a) the date occurring one hundred eighty (180) days after such Reinvestment Event, and (b) the date on which the Group Members shall have determined not to, or shall have otherwise ceased to, acquire or repair

assets useful in the Borrower's business with all or any portion of the relevant Reinvestment Deferred Amount.

**"Related Parties"**: with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

**"Relevant Governmental Body"**: the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**"Replacement Lender"**: as defined in Section 2.23.

**"Required Lenders"**: at any time, (a) if only one Lender holds the outstanding Term Loans and the Revolving Commitments, such Lender; and (b) if more than one Lender holds the outstanding Term Loans and Revolving Commitments, then at least two unaffiliated Lenders who hold more than 50.0% of the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding, and (ii) the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this clause (b), the outstanding principal amount of the Term Loans held by any Defaulting Lender and the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that a Lender and its Affiliates shall be deemed one Lender.

**"Requirement of Law"**: as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or the administration, interpretation, implementation or application or determination of an arbitrator or a court or other Governmental Authority (including, for the avoidance of doubt, the Basel Committee on Banking Supervision and any successor thereto or similar authority or successor thereto), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Resolution Authority"**: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**"Responsible Officer"**: with respect to any Loan Party, the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of such Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party.

**"Restricted Payments"**: as defined in Section 7.6.

**"Revaluation Date"**: with respect to any Letter of Credit, each of the following: (a) each date of issuance, amendment and/or extension of a Letter of Credit denominated in a Foreign Currency, (b) each date of any payment by the Issuing Lender under any Letter of Credit denominated in a Foreign Currency, (c) in the case of all Existing Letters of Credit denominated in Foreign Currencies, the Closing Date, and (d) such additional dates as the Administrative Agent or the Issuing Lender shall determine or the Required Lenders shall require; provided that, the Administrative Agent or the Issuing Lender shall cause a Revaluation Date to occur in respect of each Letter of Credit denominated in a Foreign Currency not less than quarterly.

**"Revolving Commitment"**: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading "Revolving Commitment" opposite such Lender's name on Schedule 1.1A (as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if any Incremental Revolving Commitments are made thereunder) or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time

to time pursuant to the terms hereof (including in connection with assignments permitted hereunder). The original amount of the Total Revolving Commitments was \$50,000,000 as of the Closing Date. The original amount of the Total Revolving Commitments is \$60,000,000 as of the First Amendment Effective Date. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.

“**Revolving Commitment Period**”: the period from and including the Closing Date to the Revolving Termination Date.

“**Revolving Extensions of Credit**”: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s L/C Percentage of the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit (including the Existing Letter of Credit) at such time, plus (c) such Lender’s L/C Percentage of the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

“**Revolving Facility**”: the Revolving Commitments and the extensions of credit made thereunder.

“**Revolving Lender**”: each Lender that has a Revolving Commitment or that holds Revolving Loans.

“**Revolving Loan Conversion**”: as defined in Section 3.5(b).

“**Revolving Loan Funding Office**”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“**Revolving Loan Note**”: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

“**Revolving Loans**”: as defined in Section 2.4(a).

“**Revolving Percentage**”: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments of all Lenders shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

“**Revolving Termination Date**”: November 3, 2027.

“**S&P**”: Standard & Poor’s Ratings Services.

“**Sale Leaseback Transaction**”: any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.

“**Same Day Funds**”: (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in a Foreign Currency, same day or other funds as may be determined by the Administrative Agent or the Issuing Lender, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Foreign Currency.

**“Sanction(s)”**: any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed administered or enforced from time to time by (a) the United States Government (including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order), (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury or (e) any other relevant sanctions authority or Government Authority.

**“Sanctioned Entity”** means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”**: at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC, OFAC's consolidated “Non-Specially Designated National” list) , the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority or Government Authority, (b) any Person located, operating organized or ordinarily resident in a Designated Jurisdiction or a Sanctioned Entity, (c) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in the foregoing clauses (a) or (b) above or (d) below, or (d) any Person otherwise the target of any Sanctions.

**“SEC”**: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

**“Secured Parties”**: the collective reference to the Administrative Agent, the Lenders (including any Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), any Cash Management Bank (in its or their respective capacities as providers of Cash Management Services), and any Qualified Counterparties.

**“Securities Account”**: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Securities Account Control Agreement”**: any Control Agreement entered into by the Administrative Agent, a Loan Party and a securities intermediary holding a Securities Account of such Loan Party pursuant to which the Administrative Agent is granted “control” (for purposes of the UCC) over such Securities Account.

**“Securities Act”**: the Securities Act of 1933, as amended from time to time and any successor statute.

**“Security Documents”**: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) each Intellectual Property Security Agreement, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (g) each Pledge Supplement (as defined in the Guarantee and Collateral Agreement), (h) each Assumption Agreement (as referenced in the Guarantee and Collateral Agreement), (i) the Appian UK Stock Pledge Agreement, and (j) all other security documents hereafter delivered to any applicable Cash Management Bank granting a Lien on any property of any Person to secure the Obligations of any Group Member arising under any Cash Management Agreement, and (k) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

**“Short Term Deferred Revenue”**: as of any date of determination, all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue but expected to be recognized as revenue within twelve (12) months from such date of determination.

**“SOFR”**: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”**: the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”**: the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“SOFR Borrowing”**: as to any Borrowing, the SOFR Loans comprising such Borrowing.

**“SOFR Determination Day”**: as defined in the definition of “Daily Simple SOFR”.

**“SOFR Loan”**: a Loan that bears interest at a rate based on Adjusted Term SOFR.

**“SOFR Rate Day”**: as defined in the definition of “Daily Simple SOFR”.

**“SOFR Tranche”**: the collective reference to SOFR Loans under a particular Facility (other than the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

**“Solvency Certificate”**: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent pursuant to Section 5.1(s), which Solvency Certificate shall be in substantially the form of Exhibit D.

**“Solvent”**: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

**“Specified Swap Agreement”**: any Swap Agreement entered into by a Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) to the extent permitted under Section 7.12.

**“Spot Rate”**: for any currency, the rate determined by the Administrative Agent and the Issuing Lender to be the rate quoted by the Administrative Agent as the spot rate for the purchase of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by it if the Administrative Agent does not have as of the date of determination a spot buying rate for any such currency.

**“Subordinated Debt Document”**: any agreement, certificate, document or instrument executed or delivered by any Group Member and evidencing Indebtedness of any Group Member which is subordinated to the Obligations (including payment, lien and remedies subordination terms, as applicable) in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

**“Subordinated Indebtedness”**: Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) satisfactory to the Administrative Agent in its sole discretion.

**“Subsidiary”**: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a **“Subsidiary”** or to **“Subsidiaries”** in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

**“Surety Indebtedness”**: as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Group Member as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Group Member.

**“SVB”**: as defined in the preamble hereto.

**“Swap Agreement”**: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Group Members shall be deemed to be a “Swap Agreement.”

**“Swap Obligation”**: with respect to any Guarantor, any obligation of such Guarantor to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**“Swap Termination Value”**: in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date any such Swap Agreement has been closed out and termination value determined in accordance therewith, such termination value, and (b) for any date prior to the date referenced in clause (a), the amount determined as the mark-to-market value for such Swap Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

**“Swingline Commitment”**: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

**“Swingline Lender”**: SVB, in its capacity as the lender of Swingline Loans or such other Lender as the Borrower may from time to time select as the Swingline Lender hereunder pursuant to Section 2.7(f); provided that such Lender has agreed to be a Swingline Lender.

**“Swingline Loan Note”**: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

“**Swingline Loans**”: as defined in Section 2.6.

“**Swingline Participation Amount**”: as defined in Section 2.7(c).

“**Synthetic Lease Obligation**”: the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Taxes**”: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Loan**”: the term loans made by the Lenders pursuant to Section 2.1, and to the extent funded, any Incremental Term Loans made by the Term Loan Lenders pursuant to Section 2.27 (including, for the avoidance of doubt, the Incremental Term Loans made pursuant to the First Amendment).

“**Term Loan Commitment**”: as to any Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth under the heading “Term Loan Commitment” or “First Amendment Term Loan Commitment” opposite such Lender’s name on Schedule 1.1A (as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if any Incremental Term Loans are advanced thereunder). The original aggregate principal amount of the Term Loan Commitments was \$100,000,000 as of the Closing Date. The aggregate principal amount of the Term Loan Commitments in respect of the First Amendment Term Loan to be made on the First Amendment Effective Date is \$20,000,000.

“**Term Loan Facility**”: the Term Loan Commitments and the Term Loans made thereunder.

“**Term Loan Funding Office**”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“**Term Loan Lender**”: each Lender that has a Term Loan Commitment or that holds a Term Loan.

“**Term Loan Maturity Date**”: November 3, 2027.

“**Term Loan Note**”: a promissory note in the form of Exhibit H-3, as it may be amended, supplemented or otherwise modified from time to time.

“**Term Loan Percentage**”: as to any Term Loan Lender at any time, the percentage which such Lender’s Term Loan Commitments and funded Term Loans then constitutes of the aggregate Term Loan Commitments and funded Term Loans of all Lenders.

“**Term SOFR**”: for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such



first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Term SOFR Adjustment**”: for any calculation with respect to a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

SOFR Loans:	
<b>Interest Period</b>	<b>Percentage</b>
One (1) month	0.10%
Three (3) months	0.15%
Six (6) months	0.25%

“**Term SOFR Administrator**”: the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**”: the forward-looking term rate based on SOFR.

“**Term SOFR Borrowing**”: as to any Borrowing, the Loans bearing interest at a rate based on Adjusted Term SOFR comprising such Borrowing.

“**Total Credit Exposure**”: is, as to any Lender at any time, the unused Commitments, Revolving Extensions of Credit and outstanding Term Loans of such Lender at such time.

“**Total L/C Commitments**”: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to [Section 2.10](#) or [3.5\(b\)](#). The initial Dollar Equivalent amount of the Total L/C Commitments on the Closing Date is \$15,000,000.

“**Total Revolving Commitments**”: at any time, the aggregate amount of the Revolving Commitments then in effect.

“**Total Revolving Extensions of Credit**”: at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

“**Trade Date**”: as defined in [Section 10.6\(b\)\(i\)\(B\)](#).

“**Transferee**”: any Eligible Assignee or Participant.

“**Type**”: as to any Loan, its nature as an ABR Loan or a SOFR Loan.

“**UFCA**”: as defined in [Section 2.25\(1\)](#).

“**UFTA**”: as defined in [Section 2.25\(1\)](#).

“**UK Financial Institution**”: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**”: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”**: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unfriendly Acquisition”**: any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

**“Uniform Commercial Code”** or **“UCC”**: the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

**“United States”** and **“U.S.”**: the United States of America.

**“USCRO”**: the U.S. Copyright Office.

**“USPTO”**: the U.S. Patent and Trademark Office.

**“U.S. Government Securities Business Day”**: any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“U.S. Person”**: any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

**“U.S. Tax Compliance Certificate”**: as defined in Section 2.20(f).

**“Withholding Agent”**: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

**“Write-Down and Conversion Powers”**: (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## **1.2 Other Definitional Provisions.**

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words

“asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to a given time of day shall, unless otherwise specified, be deemed to refer to Pacific time, and (vi) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated, amended and restated or otherwise modified from time to time.

(c) The words “*hereof*,” “*herein*” and “*hereunder*” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(e) Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person) on the first date of its existence. In connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person.

**1.3 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.4 Rates.** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each case, pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract

or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### **1.5 Exchange Rates.**

(a) The Administrative Agent or the Issuing Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Letters of Credit denominated in Foreign Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Lender, as applicable.

(b) Wherever in this Agreement the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in a Foreign Currency, such amount shall be the relevant Dollar Equivalent of such Dollar amount (rounded to the nearest unit of such Foreign Currency with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Lender, as the case may be.

## **SECTION 2 AMOUNT AND TERMS OF COMMITMENTS**

### **2.1 Term Loan Commitments.**

(a) Closing Date Term Loans. Subject to the terms and conditions hereof, each Term Loan Lender severally agrees to make a Term Loan to the Borrower on the Closing Date in an amount equal to the amount of the Term Loan Commitment of such Lender.

(b) First Amendment Term Loans. Subject to the terms and conditions hereof, each Lender with a First Amendment Term Loan Commitment severally agrees to make the First Amendment Term Loan on the First Amendment Effective Date in an amount equal to such Lender's First Amendment Term Loan Commitment, such that after giving effect to the First Amendment Term Loans, the aggregate outstanding principal balance of the Term Loans (inclusive of the Term Loans funded on the Closing Date) shall be \$120,000,000.00.

(c) The Term Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.13.

**2.2 Procedure for Term Loan Borrowing.** The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. one (1) Business Day prior to the anticipated Closing Date) requesting that the Term Loan Lenders make the Term Loans on the Closing Date and specifying the amount to be borrowed. Upon receipt of such Notice of Borrowing, the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 12:00 P.M. on the Closing Date each Term Loan Lender shall make available to the Administrative Agent at the Term Loan Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall credit the account of the Borrower on the books of such office of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Term Loan Lenders in immediately available funds.

**2.3 Repayment of Term Loans.** Beginning on December 31, 2022, the Term Loans shall be repaid in consecutive quarterly installments on the last day of each fiscal quarter, each of which installments shall be in an amount equal to such Lender's Term Loan Percentage multiplied by the installment amount set forth below opposite such installment payment date:

<u>Installment Payment Dates</u> <u>(Calendar Quarter Ending)</u>	<u>Installment Amount</u>
December 31, 2022	\$625,000
March 31, 2023 through and including September 30, 2024	\$750,000 (plus, if applicable, 0.625% of the initial amount of any Incremental Term Loans)
December 31, 2024 and each quarter thereafter	\$1,500,000 (plus, if applicable, 1.25% of the initial amount of any Incremental Term Loans)

To the extent not previously paid, all Term Loans (including for the avoidance of doubt any Incremental Term Loans) shall be due and payable on the Term Loan Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

#### 2.4 Revolving Commitments.

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “**Revolving Loan**” and, collectively, the “**Revolving Loans**”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to the aggregate outstanding amount of the Swingline Loans, the aggregate undrawn Dollar Equivalent amount of all outstanding Letters of Credit, and the aggregate Dollar Equivalent amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the amount of such Lender’s Revolving Commitment. In addition, such aggregate obligations shall not at any time exceed the Total Revolving Commitments in effect at such time. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Borrowings of more than one Type may be outstanding at the same time; provided that, there shall not be more than a total of seven (7) SOFR Borrowings outstanding at any time.

(b) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

**2.5 Procedure for Revolving Loan Borrowing.** The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. (a) three U.S. Government Securities Business Days prior to the requested Borrowing Date, in the case of SOFR Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans (in each case, with originals to follow within three (3) Business Days)) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M. on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) the respective amounts of each such Type of Loan, (iv) in the case of SOFR Loans, the respective lengths of the initial Interest Period therefor, and (v) instructions for remittance of the proceeds of the applicable Loans to be borrowed. If no Interest Period is specified with respect to any requested SOFR Loan, the Borrower shall be deemed to have selected an Interest Period of one (1) month’s duration. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a SOFR Loan having an Interest Period in excess of one (1) month prior to the date that is thirty (30) days after the

Closing Date. Each borrowing under the Revolving Commitments shall be in an amount equal to in the case of ABR Loans or SOFR Loans, \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if the then Available Revolving Commitment is less than \$1,000,000, such lesser amount); provided that the Swingline Lender may request, on behalf of the Borrower, borrowings under the Revolving Commitments that are ABR Loans in other amounts pursuant to Section 2.7. Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its *pro rata* share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 10:00 A.M. on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent. No Revolving Loan will be made on the Closing Date.

**2.6 Swingline Commitment.** Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a “*Swingline Loan*” and, collectively, the “*Swingline Loans*”) to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the Available Revolving Commitment would be less than zero, (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan and (d) the Borrower shall not request a Swingline Loan if the conditions specified in Section 5.2 have not been met, and the Swingline Lender shall not make any Swingline Loan if it has actual knowledge that the conditions specified in Section 5.2 have not been met or has received written notice from any Revolving Lender that the conditions specified in Section 5.2 have not been met. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only. The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Termination Date.

### **2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.**

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic notice (which telephonic notice must be received by the Swingline Lender not later than 10:00 A.M. on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$100,000 or a whole multiple of \$100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one (1) Business Day’s telephonic notice given by the Swingline Lender no later than 10:00 A.M. and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender’s Revolving Percentage of the aggregate amount of such Swingline Loan (each a “*Refunded Swingline Loan*”) outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M. one (1)

Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Day's notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving thirty (30) days' prior notice to the Administrative Agent, the Lenders and the Borrower. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Required Lenders and the successor Swingline Lender. After the resignation or replacement of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required or permitted to make any additional Swingline Loans.

## 2.8 [Reserved].

## 2.9 Fees.

(a) Upfront Fee. On or prior to the Closing Date, the Borrower agrees to pay to the Administrative Agent an upfront fee in the amount specified in the Fee Letter.

(b) Commitment Fee. As additional compensation for the Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in arrears, on the first (1<sup>st</sup>) Business Day of each quarter, in arrears, prior to the Revolving Termination Date and on the Revolving Termination Date, a fee for the Borrower's non-use of available funds in an amount equal to the Commitment Fee Rate per annum multiplied by the difference between (x) the Total Revolving Commitments (as they may be reduced from time to time) and (y) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans, excluding the aggregate principal amount of Swingline Loans which shall be deemed to be zero for purposes hereof, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time.

(c) Agency Fees. The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(d) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

**2.10 Termination or Reduction of Revolving Commitments.** The Borrower shall have the right, without premium or penalty, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided that no such termination or reduction of the Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments in effect at such time. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the Revolving Commitments then in effect; provided further, if in connection with any such reduction or termination of the Revolving Commitments a SOFR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. The Borrower shall have the right, without premium or penalty, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the L/C Commitments or, from time to time, to reduce the amount of the L/C Commitments; provided that no such termination or reduction of L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the L/C Commitments then in effect. Any reduction of the L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective Revolving Percentage. Any termination in full of the Total Revolving Commitments shall also result in a termination in full of the Total L/C Commitments, and any reduction of the Total Revolving Commitments that results in the Total L/C Commitments exceeding the Total Revolving Commitments shall result in a reduction to the Total L/C Commitments to an amount equal to the resulting Total Revolving Commitment.

### **2.11 Optional Loan Prepayments.**

(a) Prepayments Generally. The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior thereto, in the case of SOFR Loans, and no later than 10:00 A.M. one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a SOFR Loan is prepaid, in whole or in part, on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; provided further that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked if the financing is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and



payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans and Revolving Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof. All optional prepayments shall be applied to either the Revolving Loans or the Term Loans as Borrower shall direct, and if to the Term Loans shall be applied in accordance with Section 2.18(b) and to scheduled principal installments of the foregoing on a pro rata basis to all such remaining installments (unless otherwise agreed to by the Required Lenders); provided that amounts prepaid (i.e., all regularly scheduled amortization installments of the Term Loans) shall remain included as Consolidated Fixed Charges for purposes of calculating the Consolidated Fixed Charge Coverage Ratio and shall be treated as if such prepayments had been applied pro rata to all regularly scheduled amortization installments of the Term Loans.

## 2.12 Mandatory Prepayments.

(a) [Reserved].

(b) If any Indebtedness shall be incurred by any Group Member (excluding any Indebtedness incurred in accordance with Section 7.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and other amounts as set forth in Section 2.12(e).

(c) If on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied on such date toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e); provided that notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales and Recovery Events that may be excluded from the foregoing requirement pursuant to a Reinvestment Notice shall not exceed \$5,000,000 in any fiscal year of the Borrower and (ii) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e).

(d) [Reserved].

(e) Amounts to be applied in connection with prepayments made pursuant to this Section 2.12 shall be applied to the prepayment of installments due in respect of the Term Loans on a pro rata basis as to such remaining installments and in accordance with Sections 2.3 and 2.18(b) (provided that any Term Loan Lender may decline any such prepayment (the aggregate amount of all such prepayments declined in connection with any particular prepayment, collectively, the “**Declined Amount**”), in which case the Declined Amount shall be distributed first, to the prepayment, on a *pro rata* basis, of the Term Loans held by Term Loan Lenders that have elected to accept such Declined Amounts; second, to the extent of any residual, if no Term Loans remain outstanding, to the prepayment of the Revolving Loans and Swingline Loans in accordance with Section 2.15(c) (with no corresponding permanent reduction in the Revolving Commitments); and third, to the extent of any residual, if no Term Loans, Revolving Loans or Swingline Loans remain outstanding, to the replacement of outstanding Letters of Credit and/or the deposit of an amount in cash (in an amount not to exceed 105% of the then existing L/C Exposure) in a Cash Collateral account established with the Administrative Agent for the benefit of the L/C Lenders on terms and conditions satisfactory to the Issuing Lender. Each prepayment of the Loans under this Section 2.12 (except in the case of Revolving Loans that are ABR Loans and Swingline Loans, in the event all Revolving Commitments have not been terminated) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. The Borrower shall deliver to the Administrative Agent and each Term Loan Lender notice of each prepayment of Term Loans in whole or in part pursuant to this Section 2.12 not less than five (5) Business Days prior to the date such prepayment shall be made (each, a “**Mandatory Prepayment Date**”). Such notice shall set forth (i) the Mandatory Prepayment Date, (ii) the aggregate amount of such prepayment and (iii) the options of each Term Loan Lender to (x) decline or accept its share of such prepayment and (y) to accept Declined Amounts. Any Term Loan Lender that wishes to exercise its option to decline such prepayment or to

accept Declined Amounts shall notify the Administrative Agent by facsimile not later than three (3) Business Days prior to the Mandatory Prepayment Date.

(f) The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.12, (i) a certificate signed by a Responsible Officer setting forth in reasonable detail the calculation of the amount of such prepayment or reduction and (ii) to the extent practicable, at least ten (10) days prior written notice of such prepayment or reduction (and the Administrative Agent shall promptly provide the same to each Lender). Each notice of prepayment shall specify the prepayment or reduction date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid.

(g) No prepayment fee shall be payable in respect of any mandatory prepayments made pursuant to this Section 2.12.

### **2.13 Conversion and Continuation Options.**

(a) The Borrower may elect from time to time to convert SOFR Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. one (1) Business Day prior to the proposed conversion date; provided that any such conversion of SOFR Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to SOFR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior to the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a SOFR Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If no Interest Period is specified with respect to any SOFR Loan in a Notice of Conversion/Continuation delivered by the Borrower to the Administrative Agent, the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(b) The Borrower may elect from time to time to continue any SOFR Loan by giving the Administrative Agent prior notice of such election in a Notice of Conversion/Continuation, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such SOFR Loan; provided that no SOFR Loan may be continued as such when any Event of Default has occurred and is continuing; provided further that (x) if the Borrower shall fail to give any required notice as described above in this paragraph, upon the expiration of the then current Interest Period, such SOFR Loans shall be automatically continued as SOFR Loans bearing interest at a rate based upon Adjusted Term SOFR and with an Interest Period of the same length as then expiring Interest Period or (y) if such continuation is not permitted pursuant to the preceding proviso, such SOFR Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(c) After the occurrence and during the continuance of an Event of Default, (i) the Borrower may not elect to have a Loan be made or continued as, or converted to, a SOFR Loan after the expiration of any Interest Period then in effect for such Loan and (ii), any Notice of Conversion/Continuation given by the Borrower with respect to a requested conversion/continuation that has not yet occurred shall, at the Administrative Agent's option, be deemed to be rescinded by the Borrower and be deemed a request to convert or continue Loans referred to therein as ABR Loans.

**2.14 Limitations on SOFR Tranches.** Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of SOFR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the SOFR Loans comprising each SOFR Tranche shall be equal to \$1,000,000 or a whole multiple of \$100,000 in excess thereof (or, if the available Revolving Commitment is less than \$100,000, such lesser amount), and (b) no more than seven (7) SOFR Tranches shall be outstanding at any one time.

## 2.15 Interest Rates and Payment Dates.

(a) Each SOFR Loan shall bear interest at a rate per annum equal to Adjusted Term SOFR for the Interest Period therefor plus the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00% (the “**Default Rate**”); provided that the Default Rate shall apply to all outstanding Loans automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that (x) interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand and (y) in the event of any conversion of any SOFR Loan prior to the end of the Interest Period therefor, accrued interest on such SOFR Loan and any amounts owing pursuant to Section 2.21 shall be payable on the effective date of such conversion.

## 2.16 Computation of Interest and Fees; Conforming Changes.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. Any change in the interest rate on a Loan resulting from a change in the ABR shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

(c) In connection with the use or administration of any Benchmark, the Administrative Agent shall have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of such Benchmark.

## 2.17 Inability to Determine Interest Rate.

(a) Inability to Determine Interest Rate. Subject to Section 2.17(b), if, as of any date:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, or

(ii) the Required Lenders determine that for any reason, in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that “Adjusted Term

SOFR” for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent,

the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans shall be suspended (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately or, in the case of a Term SOFR Borrowing, at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.21.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the affected Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.17(b)(iv) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other

party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (i) the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period.

## **2.18 Pro Rata Treatment and Payments.**

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments shall be made *pro rata* according to the respective Term Loan Percentages, L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders; provided that, for the avoidance of doubt, each borrowing of Incremental Term Loans shall be made *pro rata* according to the respective Term Loan Commitments of the Lenders providing such Incremental Term Loans.

(b) Except as otherwise provided herein, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term Loans then held by the Term Loan Lenders. The amount of each principal prepayment of the Term Loans (whether optional or mandatory) shall be applied to reduce the then remaining installments of the Term Loans *pro rata* based upon the respective then remaining principal amounts thereof. Except as otherwise may be agreed by the Borrower and the each of the affected Term Loan Lenders, any prepayment of Loans shall be applied to the then outstanding Term Loans on a *pro rata* basis regardless of type. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M. on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Funding Office, in Dollars (except as otherwise provided herein with respect to a Foreign Currency) and in Same Day Funds. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in a Foreign Currency, the Borrower shall make such payment in Dollars in the Dollar

Equivalent of the Foreign Currency payment amount. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the SOFR Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Term Loans, (ii) make Revolving Loans, (iii) fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iv) fund its respective Swingline Participation Amount of any Swingline Loan, and (v) make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on

any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Term Loan Percentage, Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall (a) notify the Administrative Agent of the receipt of such payment, and (b) within five (5) Business Days of such receipt purchase (for cash at face value) from the other Term Loan Lenders, Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Term Loans or Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Term Loan Percentages, Revolving Percentages or L/C Percentages, as applicable; provided, however, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Term Loan Lenders, the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation. For the avoidance of doubt, no amounts received by the Administrative Agent or any Lender from any Guarantor that is not a Qualified ECP Guarantor shall be applied in partial or complete satisfaction of any Excluded Swap Obligations.

(l) [Reserved].

(m) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

## **2.19 Illegality; Requirements of Law.**

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, or to determine or charge interest based upon SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent) (an "*Illegality Notice*"), any obligation of the Lenders to make, and the right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended until each affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to ABR Loans, on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day, in each case, until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.21.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its Loans, Loan principal, Letters of Credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing, maintaining or participating in Letters of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum receivable or received by such Lender or other Recipient



hereunder in respect thereof (whether of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrower will promptly pay such Lender or other Recipient, as the case may be, any additional amount or amounts necessary to compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case (i) and (ii) be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than six (6) months prior to the date that such Lender notifies the Borrower of the change in the Requirement of Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such six (6) month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

## **2.20 Taxes.**

For purposes of this Section 2.20, the term "Lender" includes the Issuing Lender and the term "applicable law" includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Requirements of Law, and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such

deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Indemnified Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion,

execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.20(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.20(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.20(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the Discharge of Obligations.

**2.21 Indemnity**. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.23 or (e) any failure of the Borrower to make any payment of any drawing under any Letter of Credit (or interest due thereon) denominated in a Foreign Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds or from any fees payable. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive

pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

**2.22 Change of Lending Office.** Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.19 or 2.20, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender; provided that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

**2.23 Substitution of Lenders.** Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (c) below being referred to as an "**Affected Lender**" hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19(b) or Section 2.19(c) (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender's Loans and Commitment; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment (the replacing Lender or lender in (i) or (ii) being a "**Replacement Lender**"); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected Lender's Loan and/or Commitment (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any SOFR Loans then outstanding; and provided further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clauses (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or

an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

## 2.24 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definitions of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether optional or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Deposit Account and released pro rata to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, Issuing Lender or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, Issuing Lender or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each Non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each Non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that the aggregate obligations of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans of that Lender plus the aggregate Dollar Equivalent amount of that Lender's L/C Percentage of then outstanding Letters of Credit, plus the aggregate amount of such Lender's pro rata percentage of the then outstanding Swingline Loans. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages, L/C Percentages, and Term Loan Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied

that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

## **2.25 Joint and Several Liability of the Borrowers.**

If, at any time there is more than one Person composing the Borrower:

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.25), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations.

(d) The Obligations of each Borrower under the provisions of this Section 2.25 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Loans made or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without



limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.25 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.25, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.25 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.25 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower, the Administrative Agent or any Lender.

(f) Each Borrower represents and warrants to the Administrative Agent and Lenders that such Borrower is currently informed of the financial condition of the Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to the Administrative Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of the Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses (i) arising out of an election of remedies by the Administrative Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Borrower's rights of subrogation and reimbursement against any applicable Loan Party by the operation of Section 580 or 726 of the California Code of Civil Procedure or otherwise, and (ii) relating to any suretyship defenses available to it under the Uniform Commercial Code or any other applicable law, including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil Code Sections 1432, 2787 through 2855, 2899 and 3433.

(h) Each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property at any time. This means, among other things:

(i) The Administrative Agent and Lenders may collect from such Borrower without first foreclosing on any real or personal property Collateral pledged by the Borrowers.

(ii) If the Administrative Agent or any Lender forecloses on any Collateral consisting of real property pledged by the Borrowers:

(A) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) The Administrative Agent and Lenders may collect from such Borrower even if the Administrative Agent or Lenders, by foreclosing on real property, has destroyed any right such Borrower may have to collect from the other Borrowers.

This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(i) The provisions of this Section 2.25 are made for the benefit of the Administrative Agent, the Lenders, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all the Borrowers as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, any Lender, any successor or any assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The

provisions of this Section 2.25 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.25 will forthwith be reinstated in effect, as though such payment had not been made.

(j) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or Lenders with respect to any of the Obligations or any collateral security therefor until the Discharge of Obligations. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Administrative Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior Discharge of Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. Notwithstanding anything to the contrary contained in this Section 2.25, no Borrower shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "**Foreclosed Borrower**"), including after the Discharge of Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Capital Stock of such Foreclosed Borrower whether pursuant to the Security Documents or otherwise.

(k) Each Borrower hereby agrees that, after the occurrence and during the continuance of any Default or Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior Discharge of Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent, and such Borrower shall deliver any such amounts to the Administrative Agent for application to the Obligations in accordance with the terms of this Agreement.

(l) Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "**Accommodation Payment**"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each other Borrower in an amount, for each of such other Borrower, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "**Allocable Amount**" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(m) Each entity composing the Borrower and each other Loan Party hereby irrevocably appoints Appian Corporation as the borrowing agent and attorney-in-fact for all entities composing the Borrower and each other Loan Party (the "**Administrative Borrower**"), which appointment

shall remain in full force and effect unless and until the Administrative Agent shall have received prior written notice signed by each entity composing the Borrower that such appointment has been revoked and that another entity composing the Borrower has been appointed Administrative Borrower. Each entity composing the Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Administrative Agent with all notices with respect to Loans and Letters of Credit obtained for the benefit of any entity composing the Borrower or any other Loan Party and all other notices and instructions under this Agreement and the other Loan Documents, and (b) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Loan Documents.

**2.26 Notes.** If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

## **2.27 Incremental Loans.**

(a) Term Loans. At any time commencing on the Closing Date until the Term Loan Maturity Date, provided no Default or Event of Default has occurred and is continuing and subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Revolving Commitments, from and after the First Amendment Effective Date not more than five (5) increases in the aggregate) to the Term Loan Commitment or the funding of a new Term Loan from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent and the Borrower for the purpose of financing Permitted Acquisitions, working capital and general corporate purposes (each, an "**Incremental Term Loan**"), in an aggregate amount for all such Incremental Term Loans and any Incremental Revolving Commitments, not to exceed \$170,000,000 from and after the First Amendment Effective Date. Any Incremental Term Loan shall be in the amount of at least \$5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)) and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)).

(b) Revolving Loans. At any time during the Revolving Commitment Period, provided no Default or Event of Default has occurred and is continuing and subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Term Loans, from and after the First Amendment Effective Date not more than five (5) increases in the aggregate) to the Revolving Commitment (the "**Incremental Revolving Commitment**"), in an aggregate amount not to exceed \$90,000,000; provided that, in no event shall the aggregate amount of Incremental Revolving Commitment plus the Incremental Term Loans exceed \$170,000,000 from and after the First Amendment Effective Date). Any Incremental Revolving Commitment shall be in the amount of at least \$5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)) and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)).

(c) Lender Election to Increase; Prospective Lenders. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period (such period, the "**Election Period**") within which each Lender is requested to respond (which Election Period shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders), and the Administrative Agent shall promptly thereafter notify each Lender of the Borrower's request for such Lender to participate on a pro rata basis for such Incremental Term Loan and/or such Incremental Revolving Commitment and the Election Period during which each Lender is requested to respond to such Borrower request; provided that if such notice indicates that it is conditioned upon the occurrence of a specified event, such notice may be revoked if such event does not occur prior to the requested funding date. No Term Loan Lender shall be obligated to participate in any Incremental Term Loan, and no Revolving Lender shall be obligated to participate in any Incremental Revolving

Commitment, and each such Lender's determination to participate shall be in such Lender's sole and absolute discretion. Any Lender not responding by the end of such Election Period shall be deemed to have declined to increase its respective Revolving Commitment or Term Loan Commitment, as applicable. To the extent sufficient Term Loan Lenders (or their Affiliates) or Revolving Lenders (or their Affiliates), as applicable, do not agree to provide an Incremental Term Loan or Incremental Revolving Commitment, as applicable, on terms acceptable to the Borrower, the Borrower may invite any prospective lender that satisfies the criteria of being an "Eligible Assignee" and is reasonably satisfactory to the Administrative Agent to become a Lender pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent in connection with the proposed Incremental Term Loan or Incremental Revolving Commitment, as applicable (provided that the joinder of any such "Lender" for the purpose of providing all or any portion of any such Incremental Term Loan or Incremental Revolving Commitment, as applicable, shall not require the consent of any other Lender (including any other "Lender" that is joining this Agreement to provide all or part of such Incremental Term Loan or Incremental Revolving Commitment, as applicable).

(d) Effective Date and Allocation. If the Total Revolving Commitments are increased or Incremental Term Loans are extended in accordance with this Section 2.27, the Administrative Agent and the Borrower shall determine the effective date (the "**Increase Effective Date**") and the Administrative Agent shall determine the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable and the Increase Effective Date.

(e) Conditions Precedent to Incremental Facilities. Each of the following shall be the only conditions precedent to the making of an Incremental Term Loan or Incremental Revolving Commitment:

(i) The Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of each such Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Revolving Commitment or Incremental Term Loan, as applicable.

(ii) Each of the conditions precedent set forth in Section 5.2 shall be satisfied.

(iii) The Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof both as of the end of the most recently ended fiscal quarter in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof (or, prior to the fiscal quarter ending December 31, 2022, the financial covenant levels required as of December 31, 2022) prior to the making of the Incremental Term Loan or Incremental Revolving Commitment and immediately after giving effect to the making of the Incremental Term Loan or Incremental Revolving Commitment on a pro forma basis (treating any Incremental Revolving Commitment as fully funded); provided, however, that notwithstanding the foregoing, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof after giving pro forma effect to such increase shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio (or, prior to the fiscal quarter ending December 31, 2022, the maximum ratio permitted for December 31, 2022) permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which the Incremental Term Loan or Incremental Revolving Commitment is funded in respect of which financial statements and a Compliance Certificate have been delivered pursuant to the terms hereof shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis (treating any Incremental Revolving Commitment as fully funded); provided further, that if the Incremental Term Loan or Incremental Revolving Commitment is funded prior to the reporting for the fiscal quarter ending

December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until the Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022.

(iv) The Borrower shall have delivered to the Administrative Agent a Compliance Certificate certifying as to compliance with the requirements of clauses (ii) and (iii) above, together with all reasonably detailed calculations evidencing compliance with clause (iii) above.

(v) The Borrower shall (x) deliver to any Lender providing Incremental Revolving Commitments or Incremental Term Loans, as applicable hereunder (or any new Lender providing such Incremental Revolving Commitments or Incremental Term Loans, as applicable hereunder) any Notes requested by such Lender in connection with the making of such increased or new Revolving Commitment or Incremental Term Loans, as applicable, and (y) have executed any amendments to this Agreement and the other Loan Documents as may be required by the Administrative Agent to effectuate the provisions of this Section 2.27, including, if applicable, any amendment that may be necessary to ensure and demonstrate that the Liens and security interests granted by the Loan Documents are perfected under the UCC or other applicable law to secure the Obligations in respect of the Incremental Term Loans and Incremental Revolving Commitment, as applicable.

(vi) The Borrower shall have paid to the Administrative Agent any fees required to be paid pursuant to the terms of the Fee Letter, and shall have paid to any Lender any fees required to be paid to such Lender in connection with the Incremental Revolving Commitment (or in the case of a new Lender, such new Revolving Commitment) or Incremental Term Loans, as applicable (or in the case of a new Lender, such new Term Loan Commitment or Incremental Term Loans) hereunder; provided that, if any new Lender providing an Incremental Revolving Commitment or Incremental Term Loans within six (6) months of the Closing Date is provided a fee for such Incremental Revolving Commitments or Incremental Term Loans that exceeds the fees provided to existing Lenders in respect of the Revolving Commitments and Term Loans extended by such Lender (the "**Existing Commitments**") on a percentage basis as to such Lender's Commitments, then Borrower shall pay each such existing Lender a supplemental fee on such Lender's Existing Commitments equal to the difference between the fee percentage paid to such new Lender and the fee percentage paid to such existing Lender.

(vii) With respect to any increase in the Revolving Commitment, the Borrower shall prepay any Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 2.11) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Percentages resulting from any non-ratable increase in the Revolving Commitments undertaken pursuant to this Section 2.27.

(f) Distribution of Revised Commitments Schedule. The Administrative Agent shall promptly distribute to the parties an amended Schedule 1.1A (which shall be deemed incorporated into this Agreement), to reflect any such changes in the Revolving Commitments, Term Loan Commitments or outstanding Term Loans if applicable of the existing Lenders, or the addition of any new Lenders and their respective Revolving Commitment amounts, Term Loan Commitment amounts or outstanding Term Loans, as applicable, and the respective Revolving Percentages or Term Loan Percentages, as applicable, resulting therefrom.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or Section 10.1 to the contrary.

(h) Treatment of Incremental Facilities.

(i) Any Incremental Term Loans shall, for purposes of principal repayment and interest, be treated substantially the same as the Term Loans funded on the Closing Date, and shall be made on the same terms (including with respect to pricing, and maturity date) as, and made pursuant to the same documentation as, is applicable to, the original Term Loan Facility, and any additional Revolving Loans made available pursuant to any such Incremental Revolving Commitment shall be treated on the same terms (including with respect to pricing and maturity date) as, and made pursuant to the same documentation as is applicable to, the original Revolving Facility. Upon the funding of each

Incremental Term Loan, the scheduled amortization payments set forth in Section 2.3 shall be recalculated and increased, commencing in the first full quarter after such Incremental Term Loan is funded, by aggregating the Term Loan made on the Closing Date with all Incremental Term Loans and multiplying such amount by the applicable percentage set forth in the table in Section 2.3, and such amended amortization schedule shall be effective commencing on the last day of the first full fiscal quarter after the Incremental Term Loan is funded.

(ii) The Incremental Term Loans and Incremental Revolving Commitments, as applicable, shall, for purposes of prepayments, be treated substantially the same as the Term Loans funded on the Closing Date and the initial Revolving Commitment, as applicable, and shall have the same terms as the Term Loans and the initial Revolving Facility, as applicable, except as may be mutually agreed among the Borrower, the Administrative Agent and the Required Lenders (or each Lender to the extent effectuating a change in treatment of the Loans that requires the consent of each Lender pursuant to Section 10.1(a)); provided, in any case, that (i) no Incremental Term Loan or Incremental Revolving Commitment, as applicable, shall have a final maturity date earlier than the Term Loan Maturity Date or the Revolving Termination Date, as applicable, (ii) the amortization schedule of any Incremental Term Loan shall not have a weighted average life to maturity shorter than the remaining weighted average life to maturity of the Term Loans funded on the Closing Date, and (iii) to the extent the yield (including any original issue discount or similar yield-related discounts, deductions or payments but excluding any customary arrangement fees payable to the Administrative Agent) applicable to the Incremental Term Loan or Incremental Revolving Commitment, as applicable, is higher than the yield applicable to the Term Loans funded on the Closing Date or the Revolving Facility by more than 0.50% (or, with respect to any Incremental Term Loan or Incremental Revolving Commitment provided within six (6) months of the Closing Date, by any amount), this Agreement shall be amended to increase the Applicable Margin applicable to the Term Loans funded on the Closing Date (or any subsequently funded Term Loans) and the Revolving Facility, as applicable, to the extent necessary so that the Applicable Margin on such Incremental Term Loan or the Incremental Revolving Commitment, as applicable, is no more than 0.50% greater (or, with respect to any Incremental Term Loan or Incremental Revolving Commitment provided within six (6) months of the Closing Date, is no greater than any amount greater) than the applicable margin on the Term Loans funded on the Closing Date (or any subsequently funded Term Loans) or the Revolving Facility, as applicable (the “**MFN Protection**”).

(i) Effect of Increase. Upon the increase in the Total Revolving Commitments or the extension of Incremental Term Loans, as applicable, under this Section 2.27, all references in this Agreement and in any other Loan Document (i) to the Revolving Commitment, Term Loan Commitment or Term Loans, as applicable, of any Lender shall be deemed to include any increase in such Lender’s Revolving Commitment, Term Loan Commitment or Term Loans, as applicable, pursuant to this Section 2.27, and (ii) to the Total Revolving Commitments shall be deemed to include the increase in the Total Revolving Commitments made pursuant to this Section 2.27; and (iii) to the aggregate amount of the Term Loan Commitments or Term Loans shall be deemed to include the increase in the aggregate amount of the Term Loan Commitment made or Incremental Term Loans extended pursuant to this Section 2.27. The Revolving Loans, Revolving Commitments, and Total Revolving Commitments, Term Loans, and aggregate amount of the Total Term Loan Commitments that are subject to an increase under this Section 2.27 shall be entitled to all of the benefits afforded by this Agreement and the other Loan Documents and shall benefit equally and ratably from any guarantees and Liens provided under the Loan Documents in favor of the Secured Parties.

### SECTION 3 LETTERS OF CREDIT

#### 3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit (“**Letters of Credit**”) for the account of the Borrower on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue (and shall not issue) any Letter of Credit if, after giving effect to such issuance, (x) the Dollar Equivalent L/C Exposure would exceed the Dollar Equivalent Total L/C Commitments, (y) the Dollar Equivalent of Available Revolving

Commitment at such time would be less than zero, or (z) the Issuing Lender has been notified in writing at least one Business Day prior to the issuance thereof by the Borrower, the Administrative Agent or a Revolving Lender that the funding conditions set forth in Section 5.2 cannot be satisfied at such time (or otherwise has actual knowledge that such conditions cannot be satisfied at such time). Unless otherwise agreed to by the Administrative Agent and the applicable Issuing Lender in their sole discretion, each Letter of Credit shall (i) be denominated in Dollars (or Foreign Currency if agreed to by the Administrative Agent and the applicable Issuing Lender) and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above).

(b) The Issuing Lender shall not at any time be obligated to issue (and in the case of clause (iii) below shall not issue) any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied;

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than \$500,000; or

(vii) any Lender is at that time a Defaulting Lender, unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

**3.2 Procedure for Issuance of Letters of Credit.** The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it

in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

### **3.3 Fees and Other Charges.**

(a) The Borrower agrees to pay, with respect to each Existing Letter of Credit and each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily Dollar Equivalent amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a “**Letter of Credit Fronting Fee**”), (ii) a letter of credit fee of equal to the Applicable Margin relating to SOFR Loans multiplied by the daily Dollar Equivalent amount available to be drawn under each such Letter of Credit on the drawable Dollar Equivalent amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a “**Letter of Credit Fee**”), in each case payable quarterly in arrears on the first (1<sup>st</sup>) Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an “**L/C Fee Payment Date**”) after the issuance date of such Letter of Credit, and (iii) the Issuing Lender’s standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) the Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the “**Issuing Lender Fees**”). All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. For purposes of computing the Dollar Equivalent of the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.5.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such fee, if any, payable to the Issuing Lender for its own account.

(e) All fees payable under this Section 3.3 shall be fully earned on the date paid and nonrefundable.

### **3.4 L/C Participations; Existing Letters of Credit.**

(a) **L/C Participations.** The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender’s own account and risk an undivided interest equal to such L/C Lender’s L/C Percentage in the Issuing Lender’s obligations and rights under



and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) **Existing Letters of Credit.** On and after the Closing Date, the Existing Letters of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to Sections 3.3(a) and (b), reimbursement of costs and expenses to the extent provided herein and for purposes of being secured by the Collateral, a Letter of Credit outstanding under this Agreement and entitled to the benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement (which shall control in the event of a conflict).

### **3.5 Reimbursement.**

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than the immediately following Business Day. In the case of a Letter of Credit denominated in a Foreign Currency, the Borrower shall reimburse the Issuing Lender in such Foreign Currency, unless (A) the Issuing Lender (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the Issuing Lender promptly following receipt of the notice of drawing that the Borrower will reimburse the Issuing Lender in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in a Foreign Currency, the Issuing Lender shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. In the event that a drawing denominated in a Foreign Currency is to be reimbursed in Dollars and the Dollar amount paid by the Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Foreign Currency equal to the drawing, the Borrower agrees, as a separate and independent obligation, to indemnify the Issuing Lender for the loss resulting from its inability on that date to purchase the Foreign Currency in the full amount of the drawing. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Same Day Funds; provided that the Borrower may, subject to the satisfaction of the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in a Foreign Currency) (and the Administrative Agent may apply Cash Collateral provided for this purpose); upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to

reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a “**Revolving Loan Conversion**”), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

**3.6 Obligations Absolute.** The Borrower’s obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower’s obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys’ fees) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (a) the issuance of any Letter of Credit, or (b) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing Lender or such L/C Lender (as determined by a court of competent jurisdiction by a final nonappealable judgment).

**3.7 Letter of Credit Payments.** If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

**3.8 Applications.** To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

**3.9 Interim Interest.** If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a), or the L/C Lenders shall have reimbursed such L/C

Disbursement in full on such date as provided in Section 3.5(b), in each case the Dollar Equivalent of the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

### **3.10 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan or Swingline Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% of such L/C Exposure (110% in the case of any Letter of Credit in a currency other than Dollars).

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv)) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent

that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents including any applicable Cash Management Agreement.

**3.11 Additional Issuing Lenders.** The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an Issuing Lender under the terms of this Agreement. Any Lender designated as an Issuing Lender pursuant to this paragraph shall be deemed to be an “**Issuing Lender**” (in addition to being a Lender) in respect of Letters of Credit issued or to be issued by such Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Lender and such Lender.

**3.12 Resignation of the Issuing Lender.** The Issuing Lender may resign at any time by giving at least thirty (30) days’ prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

**3.13 Applicability of UCP and ISP.** Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to with respect to (a) standby Letters of Credit, the rules of the ISP, and (b) with respect to commercial Letters of Credit, the rules of the Uniform Customs and Practice for Documentary Credits, as published in its most recent version by the International Chamber of Commerce on the date any commercial Letter of Credit is issued.

## **SECTION 4 REPRESENTATIONS AND WARRANTIES**

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans and issue the Letters of Credit, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to itself and each other Group Member, that:

### **4.1 Financial Condition.**

(a) The Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Financial Statements have been prepared based on the best information available to the Borrower as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Group Members as of June 30, 2022 assuming that the events specified in the preceding sentence had actually occurred at such date.

(b) The audited consolidated balance sheets of the Group Members as of December 31, 2019, December 31, 2020, and December 31, 2021, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from BDO USA, LLP, present fairly in all material respects the consolidated financial condition of the Group Members as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of the Group Members as at June 30, 2022, and the related unaudited consolidated statements of income and cash flows for the six (6) month period ended on such date, present fairly in all material respects the consolidated financial condition of the Group Members as at such date, and the consolidated results of its operations and its consolidated cash flows for the six (6) month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein and subject to, in the case of unaudited financial statements normal year-end adjustments and absence of footnotes). No Group Member has, as of the Closing Date, any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2021 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

**4.2 No Change.** Since December 31, 2021, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

**4.3 Existence; Compliance with Law.** Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing (if applicable) under the laws of each jurisdiction where the failure to be so qualified or in good standing could reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**4.4 Power, Authorization; Enforceable Obligations.** Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No material Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described on Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect, and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution and delivery will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the extensions of credit hereunder and the use of the

proceeds thereof will not violate any material Requirement of Law (except as set forth on Schedule 4.5) or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Group Member has violated any Requirement of Law or violated or failed to comply with any Contractual Obligation applicable to the Group Members that could reasonably be expected to have a Material Adverse Effect. The absence of obtaining the Governmental Approvals described on Schedule 4.5 and the violations of Requirements of Law referenced on Schedule 4.5 shall not have an adverse effect on any rights of the Lenders or the Administrative Agent pursuant to the Loan Documents.

**4.6 Litigation.** Except as disclosed on Schedule 4.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened, by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

**4.7 No Default.** No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either immediately result from the making of a requested credit extension.

**4.8 Ownership of Property; Liens; Investments.** Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property material to the Group Member's business, and none of such property is subject to any Lien except as permitted by Section 7.3. No Loan Party owns any Investment except as permitted by Section 7.7. Section 10 of the Collateral Information Certificate sets forth a complete and accurate list of all real property owned by each Loan Party as of the Closing Date, if any. The Collateral Information Certificate sets forth a complete and accurate list of all leased real property under which any Loan Party is the lessee as of the Closing Date.

**4.9 Intellectual Property.** Each Group Member owns, or is licensed, or otherwise has the right, to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To the knowledge of any Group Member, no claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any Group Member's Intellectual Property, nor does any Group Member know of any valid basis for any such claim, unless such claim could not reasonably be expected to have a Material Adverse Effect. The use of Intellectual Property by each Group Member, and the conduct of such Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement or violation could not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of any Loan Party, threatened in writing to such effect.

**4.10 Taxes.** Each Group Member has filed or caused to be filed all Federal, state and other material tax returns that are required to be filed (taking into account all applicable extension periods) and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any taxes, charges or assessments the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member or where the amount is less than \$250,000 in the aggregate); no tax Lien has been filed, and, to the knowledge of the Loan Parties, no claim is being asserted, with respect to any such tax, fee or other charge.

**4.11 Federal Regulations.** The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of "buying" or "carrying" "margin stock" (within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect) or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for buying or

carrying any such margin stock or for extending credit to others for the purpose of purchasing or carrying margin stock in violation of Regulations T, U or X of the Board. As of the Closing Date, no Loan Party owns any margin stock. If any margin stock directly or indirectly constitutes Collateral securing the Obligations, the Borrower shall promptly notify the Administrative Agent and Lenders and, if requested in writing by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

**4.12 Labor Matters.** Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Group Members, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

#### **4.13 ERISA.**

(a) Schedule 4.13 sets forth a complete and accurate list of all Pension Plans maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes as of the Closing Date;

(b) the Borrower and its ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to each Plan, and have performed all their obligations under each Plan;

(c) no ERISA Event has occurred or is reasonably expected to occur;

(d) the Borrower and each of its ERISA Affiliates have met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(e) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date;

(f) except to the extent required under Section 4980B of the Code, or as described on Schedule 4.13, no Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any of its ERISA Affiliates;

(g) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$5,000,000;

(h) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(i) all liabilities under each Plan are (i) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing the Plans, (ii) insured with a reputable insurance company, (iii) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (iv) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto;

(j) to the knowledge of the Loan Parties, there are no circumstances which may give rise to a liability in relation to any Plan which is not funded, insured, provided for, recognized or estimated in the manner described in clause (g); and

(k) (i) the Borrower is not and will not be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the assets of the Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) the Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to governmental plans.

**4.14 Investment Company Act; Other Regulations.** No Loan Party is an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended. Except as set forth on Schedule 4.5, no Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

#### **4.15 Subsidiaries.**

(a) Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than equity granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of any Group Member, except as may be created by the Loan Documents.

(b) As of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.1(b), no Subsidiary which has been designated as an Excluded Foreign Subsidiary fails to satisfy the limitations set forth in the definition thereof.

**4.16 Use of Proceeds.** The proceeds of the Term Loans and the Revolving Loans shall be used to refinance the obligations of the Borrower outstanding under the Existing SVB Credit Facility, to pay related fees and expenses and for general corporate purposes and working capital. The proceeds of any Incremental Term Loan shall be used to finance Permitted Acquisitions; provided that, for the first \$60,000,000 of Incremental Term Loans (including the First Amendment Term Loans) funded pursuant to Section 2.27 after the Closing Date, such Incremental Term Loans may also be used for general corporate purposes and working capital. All or a portion of the proceeds of the Revolving Loans, Swingline Loans, and the Letters of Credit, shall be used for general corporate purposes and working capital.

**4.17 Environmental Matters.** Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) except as disclosed on Schedule 4.17, the facilities and properties owned, leased or operated by any Group Member (the “**Properties**”) do not contain, and to the knowledge of the Loan Parties, have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could reasonably be expected to give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “**Business**”), nor does any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability



under, any Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of any Loan Party, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(f) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as set forth on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has assumed any liability of any other Person under Environmental Laws.

**4.18 Accuracy of Information, etc.** No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such projections and financial information as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such projections and financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

#### **4.19 Security Documents.**

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Guarantee and Collateral Agreement that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction ("***Certificated Securities***"), when certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the offices specified on Schedule 4.19(a), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by

Section 7.3). As of the Closing Date, none of the Capital Stock of any Group Members that is a limited liability company or partnership has any Capital Stock that is a Certificated Security.

(b) Each of the Mortgages delivered after the Closing Date will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

**4.20 Solvency; Voidable Transaction.** The Group Member are, taken as a whole, and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, will be, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

**4.21 Regulation H.** No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

**4.22 Designated Senior Indebtedness.** The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

#### **4.23 Data Security and Privacy.**

(a) Each Group Member is, and at all times, has been, in compliance in all material respects with (i) all applicable Data Protection Laws, including, to the extent applicable, but not limited to the GDPR and those relating to cross-border transfers; (ii) all applicable contractual obligations of each Loan Party and its Subsidiaries concerning data privacy and security relating to Personal Data in the possession or control of any Group Member or maintained by third parties on behalf of such Group Member and having access to such information under contracts (or portions thereof) to which a Group Member is a party; and (iii) all applicable data transfer agreements and data processing agreements, including the EU standard contractual clauses, to which a Group Member is a party (collectively, “**Privacy Agreements**”):

(b) Each Group Member is, and has been, in compliance in all material respects with all applicable prior and current written internal and public-facing privacy policies and notices of the Group Members regarding the collection, retention, use, processing, disclosure and distribution of Personal Data by the Group Members or their respective agents (collectively, the “**Privacy Policies**”), and the Privacy Policies have been maintained to be consistent in all material respects with the actual practices of each Group Member. The Privacy Policies contemplate the Group Members’ current uses of the Personal Data, and to the extent required under applicable Data Protection Laws, each Group Member has sought and obtained the appropriate consent from the applicable data subject for such uses. The Privacy Policies have made all material disclosures to users, customers, employees, or other individuals required by Data Protection Laws.

(c) Each Group Member has implemented and maintains a commercially reasonable security program (“**Security Program**”) that (i) complies in all material respects with all applicable Data Protection Laws, applicable Privacy Policies, and applicable Privacy Agreements, and (ii) includes commercially reasonable administrative, technical, organization, and physical security procedures and measures designed to preserve the security and integrity of all Personal Data and any other sensitive or confidential information or data related to each Group Member (collectively, “**Company Sensitive Information**”) in such Group Member’s possession or control and to protect such Company Sensitive

Information against unauthorized or unlawful processing, access, acquisition, use, theft, interruption, modification, disclosure, loss, destruction or damage.

(d) Except as disclosed on Schedule 4.23(d), there has been (i) no actual, suspected or alleged (in writing) incidents of unauthorized access, use, intrusion, disclosure or breach of the security of any information technology systems owned or controlled by a Group Member or any of their contractors and used by such contractors on behalf of a Group Member, and (ii) no actual, suspected or alleged (in writing) incidents of unauthorized acquisition, destruction, damage, disclosure, loss, corruption, alteration, or use of any Company Sensitive Information, in each case that could reasonably be expected to cause a Material Adverse Effect.

(e) Each Group Member has a valid and legal right (whether contractually, by applicable law or otherwise) to access or use all Personal Data that is accessed and used by or on behalf of a Group Member in connection with the sale, use and/or operation of their products, services and businesses.

(f) Except as would not reasonably be expected to have a Material Adverse Effect, there is no pending or to the knowledge of any Loan Party, threatened in writing, complaints, claims, demands, inquiries, proceedings, or other notices, including any notices of any investigation or other legal proceedings, regarding a Group Member, initiated by (i) any Governmental Authority, including the United States Federal Trade Commission, a state attorney general, data protection authority or similar state official, or a supervisory authority; (ii) any counterparty to, or subject of, a Privacy Agreement; or (iii) any self-regulatory authority or entity, alleging that any activity of a Group Member: (1) is in violation of any applicable Data Protection Laws, (2) is in violation of any Privacy Agreements, (3) is in violation of any Privacy Policies or (4) is otherwise in violation of any person's privacy, personal or confidentiality rights.

**4.24 Insurance.** All insurance maintained by the Loan Parties is in full force and effect, all premiums (other than premiums financed in compliance with Section 7.2) have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance. Each Loan Party maintains insurance with financially sound and reputable insurance companies on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability, and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

**4.25 No Casualty.** No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of its property.

**4.26 Sanctions.** No Loan Party nor any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries or to the knowledge of any Loan Party or any of its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof (a) is a Sanctioned Person or Sanctioned Entity, (b) has any assets located in Sanctioned Persons or Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Group Members has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions and Anti-Money Laundering Laws. Each of the Group Members, and to the knowledge of each such Group Member, each director, officer, employee, agent and Affiliate of each such Group Member, is in compliance with all Sanctions and Anti-Money Laundering Laws. No proceeds of any Loan made hereunder or any Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, anticorruption laws or Anti-Money Laundering Laws by any Person.

**4.27 Capitalization.** Schedule 4.27 sets forth the beneficial owners of all Capital Stock of the Borrower and its consolidated Subsidiaries, and the amount of Capital Stock held by each such owner, as of the Closing Date.

**4.28 OFAC.** No Group Member, nor, to the knowledge of the Borrower or any such Group Member, any director, officer, employee, agent, affiliate or representative thereof, is a Sanctioned Person.

**4.29 Anti-Corruption Laws.** Each Group Member has conducted its businesses in compliance in all material respects with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**4.30 [Reserved].**

**4.31 Representations as to Foreign Obligors.**

(a) Each Foreign Obligor is subject to civil and commercial Requirements of Law with respect to its Obligations under, as applicable, this Agreement and the other Loan Documents to which it is a party (collectively, as to each such Foreign Obligor, the “*Applicable Foreign Obligor Documents*”), and the execution, delivery and performance by each such Foreign Obligor of the Applicable Foreign Obligor Documents to which it is party constitute and will constitute private and commercial acts and not public or governmental acts. No such Foreign Obligor nor any of its respective property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its Obligations under the Applicable Foreign Obligor Documents to which it is party.

(b) Each of the Applicable Foreign Obligor Documents are in proper legal form under the respective Requirements of Law of the jurisdiction in which the applicable Foreign Obligor party to such Applicable Foreign Obligor Documents is organized and existing (i) for the enforcement thereof against such Foreign Obligor under such Requirements of Law, and (ii) to ensure the legality, validity, enforceability, priority or admissibility in evidence thereof. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of any such Applicable Foreign Obligor Documents that such Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which the applicable Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of any such Applicable Foreign Obligor Documents or any other document, except for (x) any such filing, registration, recording, execution or notarization that has been made or that is not required to be made until such Applicable Foreign Obligor Document or any such other document is sought to be enforced, and (y) any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which any Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents to which any such Foreign Obligor is party, or (ii) on any payment to be made by any such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents to which it is party, except as has been disclosed to the Administrative Agent.

## SECTION 5 CONDITIONS PRECEDENT

**5.1 Conditions to Closing Date.** The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction or waiver, prior to or concurrently with the making of such extension of credit on the Closing Date, of the following conditions precedent:

(a) Loan Documents. The Administrative Agent shall have received each of the following, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent:

(i) this Agreement, executed and delivered (i) by the Administrative Agent, the Borrower and each Lender listed on Schedule 1.1A;

- (ii) the Collateral Information Certificate, executed by a Responsible Officer;
- (iii) if required by any Term Loan Lender, a Term Loan Note executed by the Borrower in favor of such Term Loan Lender;
- (iv) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;
- (v) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;
- (vi) the Guarantee and Collateral Agreement, executed and delivered by each Grantor named therein;
- (vii) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto; and
- (viii) that certain master intercompany note and allonge, executed by the Group Members, in form and substance reasonably acceptable to the Administrative Agent.

(b) [Reserved].

(c) Pro Forma Financial Statements; Financial Statements; Projections. The Administrative Agent shall have received (i) the Pro Forma Financial Statements, and (ii) the financial statements of the Group Members referenced in Section 4.1(b).

(d) Approvals. All Government Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents, the continuing operations of the Group Members, and the consummation of the transactions contemplated hereby, shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that could reasonably be expected to restrain, prevent or otherwise impose burdensome conditions on the financing contemplated hereby. The absence of obtaining the Governmental Approvals described on Schedule 4.5 shall not have an adverse effect on any rights of the Lenders, the Administrative Agent pursuant to the Loan Documents or an adverse effect on the Group Members with regard to their continuing operations.

(e) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (A) the Operating Documents of such Loan Party certified, in the case of formation documents, as of a recent date by the secretary of state or similar official of the relevant jurisdiction of organization of such Loan Party, (B) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (C) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (ii) a long form good standing certificate for each Loan Party from its respective jurisdiction of organization, and (iii) a certificate of foreign qualification from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect.

(f) Responsible Officer's Certificates. The Administrative Agent shall have received a certificate signed by a Responsible Officer, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (d) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2021, that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(g) Patriot Act, etc. The Administrative Agent and each Lender shall have received, to the extent requested at least two (2) Business Days prior to the Closing Date, all documentation and other information requested to comply with applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation (including the Beneficial Ownership Certification), and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(h) [Reserved].

(i) [Reserved].

(j) Existing Credit Facility, Etc. All obligations of the Group Members in respect of the Existing SVB Credit Facility shall substantially contemporaneously with the funding of the Loan proceeds on the Closing Date have been paid in full.

(k) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien, judgment and litigation searches reasonably required by the Administrative Agent, and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, or Liens to be discharged on or prior to the Closing Date pursuant to the payoff letter and other documentation satisfactory to the Administrative Agent.

(ii) Pledged Stock; Stock Powers; Pledged Notes. Other than as agreed to by the Administrative Agent in its reasonable discretion or as subject to Section 5.3 below, the Administrative Agent shall have received each promissory note (if any) pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement or other applicable Security Document, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Intellectual Property Security Agreements, Deposit Account Control Agreements, Securities Account Control Agreements, and landlord access agreements and/or bailee waivers) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create in favor of the Administrative Agent (for the benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed and delivered to the Administrative Agent or, as applicable, be in proper form for filing, registration or recordation.

(l) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent.

(m) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent) for payment on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Closing Date.

(n) Legal Opinions. The Administrative Agent shall have received the executed legal opinion of (i) Davis Polk & Wardwell LLP, New York counsel to the Loan Parties, and (ii) Morris, Nichols, Arsht & Tunnell LLP, Delaware counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent.

(o) Foreign Cash on Deposit. The Borrower shall have delivered calculations or statements evidencing the average balance of the aggregate amount of unrestricted cash held in accounts owned or maintained by Group Members with banking institutions which are not Lenders or the Affiliates of a Lender for the month ended immediately prior to the Closing Date does not exceed \$25,000,000.

(p) Borrowing Notices. The Administrative Agent shall have received, (i) in respect of the Term Loan to be made on or about the Closing Date, a completed Notice of Borrowing, attaching a funds flow, executed by the Borrower and otherwise complying with the requirements of Section 2.2, and (ii) in respect of any Revolving Loans to be made on or about the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.5.

(q) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(r) No Material Adverse Effect. There shall not have occurred since December 31, 2021 any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(s) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, that could reasonably be expected to have a Material Adverse Effect.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying such Lender's objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Closing Date or, if any extension of credit on the Closing Date has been requested, such Lender shall not have made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage or Term Loan Percentage, as the case may be, of such requested extension of credit.

**5.2 Conditions to Each Extension of Credit.** The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects (or all respects, as applicable) as of such earlier date.

(b) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 shall be complied with.

(c) Notices of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

(d) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder, each Revolving Loan Conversion and each conversion of a Term Loan shall constitute a representation and warranty by the Borrower as of the date of such extension of credit, Revolving Loan Conversion or conversion of a Term Loan, as applicable, that the conditions contained in this Section 5.2 have been satisfied.

**5.3 Post-Closing Conditions Subsequent.** The Borrower shall satisfy each of the conditions subsequent to the Closing Date specified in this Section 5.3 to the reasonable satisfaction of the Administrative Agent, in each case, by no later than the date specified for such condition below (or such later date as the Administrative Agent shall agree in its reasonable discretion):

(a) The Administrative Agent shall have completed a satisfactory initial collateral audit on or before the ninetieth (90<sup>th</sup>) day after the Closing Date.

(b) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring thirty (30) days after the Closing Date, the Appian UK Stock Pledge Agreement.

(c) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date insurance endorsements, in form and substance reasonably satisfactory to the Administrative Agent;

(d) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date evidence of the termination of any Lien in favor of ePlus Group, Inc., in form and substance reasonably satisfactory to the Administrative Agent;

(e) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring sixty (60) days after the Closing Date the stock certificate of Appian UK, representing 100% of the issued and outstanding (voting and non-voting) Capital Stock of Appian UK together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent;

(f) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring thirty (30) days after the Closing Date a certificate of foreign qualification from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect;

(g) The Borrower shall use commercially reasonable efforts to cause to be delivered to the Administrative Agent by no later than the date occurring forty-five (45) days after the Closing Date a landlord waiver with respect to the Borrower's headquarters, in form and substance reasonably satisfactory to the Administrative Agent; and

(h) The Borrower shall cause to be delivered to the Administrative Agent by no later than the date occurring sixty (60) days after the Closing Date, a Securities Account Control Agreement with respect to that certain account number [] maintained with SVB, in each case in form and substance reasonably satisfactory to the Administrative Agent.

## **SECTION 6 AFFIRMATIVE COVENANTS**

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall, and, where applicable, shall cause each of its Subsidiaries to:

**6.1 Financial Statements.** Furnish to the Administrative Agent for distribution to each Lender:



(a) as soon as available, but in any event prior to the earlier of (x) five (5) days after the date they are required by the SEC and (y) ninety (90) days after the end of each fiscal year of the Borrower, a copy of the audited consolidated and consolidating balance sheet of the Group Members as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, reported on without a “going concern” or like qualification or exception, or qualification arising out of the scope of the audit, by BDO USA, LLP or other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent; and

(b) as soon as available, but in any event prior to the earlier of (x) five (5) days after the date they are required by the SEC and (y) forty-five (45) days after the end of each fiscal quarterly period of each fiscal year of the Borrower (commencing with the quarterly period ended September 30, 2022, provided that a Compliance Certificate shall not be required to be delivered for such period), (i) the unaudited consolidated and consolidating balance sheet of the Group Members as at the end of such fiscal quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments and absence of footnotes) and (ii)(1) a reasonably detailed calculation of gross and net dollar retention, and (2) a reasonably detailed logo churn/ calculations, each in a form reasonably acceptable to the Administrative Agent, or to the extent previously approved by the Administrative Agent, consistent with past practice.

All such financial statements shall be complete and correct in all material respects (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of year-end audit footnotes) and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

Additionally, documents required to be delivered pursuant to this Section 6.1 and Section 6.2(e) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Borrower posts such documents, or provides a link thereto, either: (i) on the Borrower’s website on the Internet at the website address listed in Section 10.2; or (ii) when such documents are posted electronically on the Borrower’s behalf on an internet or intranet website to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any; provided that: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until written request to cease delivering paper copies is given by the Administrative Agent or such Lender; and (B) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by email electronic versions (*i.e.* soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

**6.2 Certificates; Reports; Other Information.** Furnish to the Administrative Agent, for distribution to each Lender (or, in the case of clause (j), to the Administrative Agent and such relevant Lender):

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, a Compliance Certificate of a Responsible Officer stating (t) to the best of such Responsible Officer’s knowledge, whether a Default or Event of Default has occurred, and if a Default or Events of Default has occurred, specifying the details thereof any action taken or proposed to be taken with respect thereto, (u) reasonably detailed information and calculations demonstrating compliance with the covenants set forth in Section 7.1 as of the last day of the fiscal quarter or fiscal year of the Borrower, as

the case may be, (v) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party since the date of the most recent report delivered pursuant to this clause (v) (or, in the case of the first such report so delivered, since the Closing Date), (w) calculations or statements evidencing the average balance of the aggregate amount of unrestricted cash held in accounts owned or maintained by Group Members (broken out by Group Member) in non-U.S. banking institutions for the prior fiscal quarter or year, as the case may be, (x) a calculation as to the (1) consolidated total assets and (2) consolidated total revenues held by each Excluded Foreign Subsidiary as of such date (in each case as determined in accordance with GAAP), (y) a completed "Covenant Support and KPIs" worksheet; and (z) solely in connection with delivery of any financial statements pursuant to Section 6.1(a), to the extent not previously delivered in such fiscal year, current insurance certificates and to the extent not previously disclosed to the Administrative Agent, a list of any Intellectual Property issued to, applied for or acquired by any Loan Party during such fiscal year.

(c) as soon as available, and in any event no later than forty-five (45) days after the end of each fiscal year of the Borrower and concurrently with any updates thereto, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Group Members as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount;

(d) promptly, and in any event within five (5) Business Days after receipt thereof by any Group Member, copies of each material notice or other material correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Group Member (other than routine comment letters from the staff of the SEC relating to the Borrower's filings with the SEC);

(e) within five (5) Business Days after the same are sent, copies of each annual report, proxy or financial statement or other material report that any Group Member sends to the holders of any class of its Indebtedness or public equity securities and, within five (5) Business Days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which any Group Member may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) upon the reasonable request by the Administrative Agent, within five (5) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Group Members;

(g) [reserved];

(h) [reserved];

(i) [reserved]; and

(j) promptly, such additional financial and other information, including, without limitation, any certification or other evidence confirming Borrower's compliance with the terms of this Agreement, as the Administrative Agent or any Lender may from time to time reasonably request.

### 6.3 [Reserved].

**6.4 Payment of Obligations.** Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.

**6.5 Maintenance of Existence; Compliance.** (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect: (1) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Plan are and continue to be promptly paid at no less than the rates required under the rules of such Plan and in accordance with the most recent actuarial advice received in relation to such Plan and applicable law.

**6.6 Maintenance of Property; Insurance.** (a) Keep all material property necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business and shall provide to the Administrative Agent, insurance certificates and accompanying endorsements naming the Administrative Agent (for the benefit of the Secured Parties) as an “additional insured” or “lender loss payee,” as applicable, with respect to such insurance policies of the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent, and (c) maintain flood insurance on all real property subject to a Mortgage as required under Section 6.12(b).

**6.7 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives and independent contractors of the Administrative Agent and any Lender, upon at least three (3) Business Days’ prior written notice (provided, that no prior notice is required if an Event of Default has occurred and is continuing) to visit and inspect any of its properties during normal business hours and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants in the presence of an officer of the Borrower and to inspect the Collateral; provided that (i) such visits shall not be undertaken more frequently than once every 12 months unless an Event of Default has occurred and is continuing, and (ii) nothing in this Section 6.7 shall require any Group Member to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (x) in respect of which

disclosure is prohibited by applicable law or any binding agreement so long as such binding agreement was not entered into in contemplation of preventing such disclosure, inspection or examination or (z) that is subject to attorney-client or similar privilege or constitutes attorney work-product (in each case, to the extent not created in contemplation of such Group Member's obligations hereunder).

**6.8 Notices.** Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) following a Responsible Officer of any Loan Party becoming aware of any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) following a Responsible Officer of any Loan Party becoming aware of any litigation or proceeding affecting any Group Member (i) in which the amount involved is \$5,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member and which, if granted, could reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(d) (i) promptly after the Borrower has knowledge or becomes aware of the occurrence of any of the following ERISA Events affecting the Borrower or any ERISA Affiliate (but in no event more than twenty (20) days after such event), the occurrence of any of the following ERISA Events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any ERISA Affiliate with respect to such event: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

(ii) (A) promptly after the giving, sending or filing thereof, or the receipt thereof, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Pension Plan, (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event, and (3) copies of such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request; and (B), without limiting the generality of the foregoing, such certifications or other evidence of compliance with the provisions of Sections 4.13 and 7.7 as any Lender (through the Administrative Agent) may from time to time reasonably request;

(e) [reserved];

(f) any material change in accounting policies or financial reporting practices by any Loan Party;

(g) [reserved];

(h) any changes to the beneficial ownership information set forth in item 37 of the Collateral Information Certificate. The Loan Parties understand and acknowledge that the Secured Parties rely on such true, accurate and up-to-date beneficial ownership information to meet their regulatory obligations to obtain, verify and record information about the beneficial owners of their legal entity customers; and

(i) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

#### **6.9 Environmental Laws.**

(a) Except as could not reasonably be expected to result in a Material Adverse Effect, comply in all material respects with, and ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Except as could not reasonably be expected to result in a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

**6.10 Operating Accounts.** On or before the date which is sixty (60) days following the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion, which approval may be by e-mail), except as otherwise agreed to by the Administrative Agent and except for Excluded Accounts, maintain the Group Members' primary domestic depository and operating accounts and securities accounts with SVB, the other Lenders or each of their Affiliates; provided that, (X) for Deposit Accounts maintained in the United States with (i) any banking institution (other than SVB), such Deposit Accounts are subject to Control Agreements, (ii) one of SVB's Affiliates Control Agreements may be required in the Administrative Agent's reasonable discretion, (Y) Securities Accounts are subject to a Control Agreement unless such Securities Accounts are maintained with SVB and (Z) the Group Members shall not maintain more than (i) \$25,000,000 at any one time in accounts for the benefit of any Foreign Subsidiaries maintained outside the United States with banking institutions which are not Lenders or the Affiliates of a Lender and (ii) \$15,000,000 at any one time in accounts for the benefit of any Foreign Subsidiaries maintained outside the United States with Lenders or Affiliates of a Lender and (iii) \$3,000,000 at any one time in accounts maintained in Canada by the Borrower at Bank of Montreal; provided, it is agreed and understood that the Loan Parties shall have until the date that is ninety (90) days following the closing date of any Permitted Acquisition, permitted Investment or creation of any new Deposit Accounts or Securities Accounts, as applicable (or such later date as may be agreed to by Administrative Agent in its sole discretion) to comply with the provisions of this Section 6.10 with regard to such accounts (other than Excluded Accounts) of the Loan Parties acquired in connection with such Permitted Acquisition or permitted Investment or created by such Loan Party, as applicable.

**6.11 Audits.** At reasonable times, on three (3) Business Days' notice (provided that no notice is required if an Event of Default has occurred and is continuing), the Administrative Agent, or its agents, shall have the right to inspect the Collateral and the right to audit and copy any and all of any Loan Party's books and records including ledgers, federal and state tax returns, records regarding assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information. The foregoing inspections and audits shall be at the Borrower's expense, and the charge therefor shall be \$1,000 per person per day (or such higher amount as shall represent the Administrative Agent's then-current standard charge for the same), plus reasonable out-of-pocket expenses. Such inspections and audits shall not be undertaken more frequently than once per year, unless an Event of Default has occurred and is continuing.

#### **6.12 Additional Collateral, Etc.**

(a) With respect to any property (to the extent included in the definition of Collateral and not constituting Excluded Assets (as defined in the Guarantee and Collateral Agreement)) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, and (y) any property subject to a Lien expressly permitted by Section 7.3(g)) as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within ten (10) Business Days or such longer period as the Administrative Agent shall

agree in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the reasonable opinion of the Administrative Agent to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly (and in any event within sixty (60) days (or such longer time period as the Administrative Agent may agree in its sole discretion)) after such acquisition, to the extent requested by the Administrative Agent, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with title and extended coverage insurance covering such real property in an amount not in excess of the fair market value as reasonably estimated by the Borrower as well as a current ALTA survey thereof, together with a surveyor's certificate, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than five (5) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent (for delivery to each Lender) shall have received the following documents (collectively, the "**Flood Documents**"): (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**") and such other documents as any Lender may reasonably request to complete its flood due diligence, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (if applicable) ("**Loan Party Notice**") that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of any such Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with all applicable laws and regulations reasonably satisfactory to the Administrative Agent and each Lender (any of the foregoing being "**Evidence of Flood Insurance**"). Notwithstanding anything contained herein to the contrary, no Mortgage will be executed and delivered until each Lender has confirmed to the Administrative Agent that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Revolving Commitments including the provision of any incremental credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans or (iii) the issuance, renewal or extension of Letters of Credit shall be subject to (and conditioned upon): (A) the prior delivery of all applicable Flood Documents with respect to such Mortgaged Properties as required by the Flood Laws and as otherwise reasonably required by the Lenders and (B) the Administrative Agent having received written confirmation from each Lenders that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements.

(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), or any new Subsidiary formed by Division or any Subsidiary no longer qualifying as an Excluded Foreign Subsidiary, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or

advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such Subsidiary that is owned directly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party and foreign law security documents, (iii) cause such Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; it being agreed that if such Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary. All information necessary for the Administrative Agent and the Lenders to complete their "know-your-customer" due diligence with respect to any such new Subsidiary shall be delivered prior to the joinder of any such new Subsidiary.

(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems reasonably necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall more than 66% of the total outstanding voting Capital Stock and 100% of the total outstanding non-voting Capital Stock of any such new Excluded Foreign Subsidiary be required to be so pledged unless such Foreign Subsidiary is joined as a Loan Party), (it being understood that notwithstanding the foregoing, 100% of all of the issued and outstanding (voting and non-voting) Capital Stock of Appian UK shall be pledged pursuant to the Appian UK Stock Pledge Agreement, (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action (including, as applicable, the delivery of any foreign law pledge documents reasonably requested by the Administrative Agent) as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) At the request of the Administrative Agent, each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from the lessor of the headquarters of each Loan Party and each leased property or bailee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located with a value in excess of \$1,000,000, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

(f) Notwithstanding the foregoing, (i) in the case of Foreign Subsidiaries, all guarantees and security shall be subject to any applicable general mandatory statutory limitations, fraudulent preference, equitable subordination, foreign exchange laws or regulations (or analogous restrictions), transfer pricing or "thin capitalization" rules, earnings stripping, exchange control restrictions, applicable maintenance of capital, retention of title claims, employee consultation or approval requirements, corporate benefit, financial assistance, protection of liquidity, and similar laws, rules and regulations and customary guarantee limitation language in the relevant jurisdiction; provided that the relevant Group Member shall use commercially reasonable endeavors to overcome such limitations (including by way of debt pushdown or seeking requisite approvals), and (ii) Subsidiaries may be

excluded from the guarantee requirements in circumstances where (1) the Borrower and the Administrative Agent reasonably agree that the cost or other consequence of providing such a guarantee is excessive in relation to the value afforded thereby or (2) in the case of Foreign Subsidiaries, such requirements would contravene any legal prohibition, could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties or result in a risk of personal or criminal liability on the part of any officer, director, member or manager of such Subsidiary; provided that the relevant Loan Party shall use commercially reasonable endeavors to overcome such limitations. As a result of the limitations in clause (i) above, the Administrative Agent may elect to waive the requirement to cause a Group Member to become a Guarantor hereunder and such Group Member shall not be a Loan Party for any purposes hereof.

**6.13 Use of Proceeds.** Use the proceeds of each credit extension only for the purposes specified in Section 4.16.

**6.14 Designated Senior Indebtedness.** Cause the Loan Documents and all of the Obligations to be deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any Indebtedness of the Loan Parties.

**6.15 Anti-Corruption Laws.** Each Group Member will comply (i) with all Sanctions and (ii) in all material respects with anti-corruption laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, anti-corruption Laws and Anti-Money Laundering Laws.

**6.16 Further Assurances.** Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent’s Lien on the Collateral or to effect the purposes of this Agreement.

## SECTION 7 NEGATIVE COVENANTS

The Borrower hereby agrees that, at all times prior to the Discharge of Obligations, the Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly:

### 7.1 Financial Covenants.

(a) Until (and including) the Cash Flow Trigger Date

(i) Minimum Liquidity. Commencing on the Closing Date until the Cash Flow Trigger Date, permit Liquidity at any time and tested quarterly, to be less than Forty Million Dollars (\$40,000,000).

(ii) Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio. Commencing on the Closing Date and ending on the last day of the fiscal quarter ending on the Cash Flow Trigger Date, permit the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as at the last day of any fiscal quarter ending on the date set forth below to exceed the ratio set forth below opposite such period (provided, in addition, that at no time shall the Recurring Revenue for the quarter ended as of any date set forth below multiplied by four (4) be less than \$180,000,000):



<b>Quarter Ending</b>	<b>Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio</b>
December 31, 2022	1.00:1.00
March 31, 2023	1.00:1.00
June 30, 2023	1.00:1.00
September 30, 2023	1.00:1.00
December 31, 2023	0.90:1.00
March 31, 2024	0.90:1.00
June 30, 2024	0.90:1.00
September 30, 2024	0.90:1.00
December 31, 2024	0.80:1.00
March 31, 2025	0.80:1.00
June 30, 2025	0.80:1.00
September 30, 2025	0.80:1.00

(b) From and after the Cash Flow Trigger Date

(i) Minimum Consolidated Fixed Charge Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2025 and for each fiscal quarter thereafter, permit the Consolidated Fixed Charge Coverage Ratio of the Group Members, as at the last day of any trailing twelve month period to be less 1.25:1.00.

(ii) Maximum Consolidated Total Leverage Ratio. Commencing with the fiscal quarter ending December 31, 2025, permit the Consolidated Total Leverage Ratio as at the last day of any trailing twelve month period ending on the date set forth below to exceed the ratio set forth below opposite such quarter end:

<b>Fiscal Quarter Ending</b>	<b>Consolidated Total Leverage Ratio</b>
December 31, 2025	4.50:1.00
March 31, 2026	4.50:1.00
June 30, 2026	4.50:1.00
September 30, 2026	4.50:1.00
December 31, 2026	4.50:1.00
March 31, 2027 and each fiscal quarter thereafter	3.50:1.00

**7.2 Indebtedness.** Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document and under any Cash Management Agreement;

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party; (ii) any Group Member (which is not a Loan Party) owing to any other Group Member (which is not a Loan Party); (iii) any Group Member (which is not a Loan Party) owing to any Loan Party, which constitutes an Investment permitted by Section 7.7(f)(iii); provided, that, such Indebtedness owing from any Group Member (which is not a Loan Party) to a Loan Party shall be evidenced by a master promissory note and such promissory note shall be pledged as Collateral; and (iv) any Loan Party owing to any Group Member (which is not a

Loan Party); provided that such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent;

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party; (iii) by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party) or (iv) of any Loan Party of the Indebtedness of any Group Member that is not a Loan Party, so long as the aggregate amount of such Guarantee Obligations is an Investment permitted by Section 7.7(f)(iii); provided that, in any case of clauses (i), (ii), (iii) or (iv), the underlying Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(e) Indebtedness (including, without limitation, Capital Lease Obligations and purchase money financing) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed \$5,000,000 at any one time outstanding and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(f) Surety Indebtedness, performance or appeal bonds, and any other Indebtedness in respect of letters of credit, banker's acceptances or similar arrangements, provided that the aggregate amount of any such Indebtedness outstanding at any time shall not exceed \$2,000,000; but excluding (in each case) Indebtedness incurred through the borrowing of money or contingent obligations in respect thereof;

(g) [reserved];

(h) [reserved];

(i) obligations (contingent or otherwise) of the Group Members existing or arising under any Specified Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.12 and not for purposes of speculation;

(j) Indebtedness of a Person (other than the Borrower or a Subsidiary) existing at the time such Person is merged with or into the Borrower or a Subsidiary or becomes a Subsidiary (excluding, in each case, any revolving line of credit and/or any Indebtedness secured by all or substantially all assets of such Person or by any Intellectual Property of such Person), provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness, and (iv) the aggregate principal amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding;

(k) Indebtedness in the form of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.7; provided that the amount of such obligation shall be deemed part of the cost of such Investment (the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP or the amount actually paid); provided further that any such Indebtedness (other than customary working capital adjustments) is subordinated on terms acceptable to the Administrative Agent in its sole discretion;

(l) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(m) Indebtedness consisting of the financing of insurance premiums;

(n) other Indebtedness in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding; and

(o) Indebtedness consisting of Permitted Litigation Financing incurred when no Event of Default has occurred and is continuing; provided that, to the extent such Indebtedness is recourse to any Group Member or any Group Member is otherwise obligated to repay any such Permitted Litigation Financing other than solely to the extent such repayment is with the proceeds of such Qualified Litigation Rights financed by such Permitted Litigation Financing, the aggregate amount of such Indebtedness shall not exceed \$10,000,000.

**7.3 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f) and any Liens granted as a replacement or substitute therefor; provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(d);

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the acquisition of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with, or within sixty (60) days after, the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (iii) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor or licensor under any lease or license entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed;

(j) judgment Liens that do not constitute a Default or an Event of Default under Section 8.1(h) of this Agreement;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more

accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depository institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection;

(l) (i) cash deposits and liens on cash and Cash Equivalents pledged to secure Indebtedness permitted under Section 7.2(f), (ii) Liens securing reimbursement obligations with respect to letters of credit permitted by Section 7.2(f) that encumber documents and other property relating to such letters of credit, and (iii) without duplication of any Liens permitted pursuant to Section 7.3(h) above, Liens securing Obligations under any Specified Swap Agreements permitted by Section 7.2(i);

(m) Liens on specific property (provided that such Liens shall not be permitted on Intellectual Property or to the extent such Lien is a blanket lien on all or substantially all of the assets of such Person) of a Person existing at the time such Person is acquired by, merged into or consolidated with a Group Member or becomes a Subsidiary of a Group Member or acquired by a Group Member; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(n) the replacement, extension or renewal of any Lien permitted by clause (m) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(o) Liens on insurance proceeds in favor of insurance companies granted solely to secured financed insurance premiums;

(p) Liens in favor of custom and revenue authorities arising as a matter of law to secure the payment of custom duties in connection with the importation of goods;

(q) Liens on any earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property not otherwise prohibited hereunder;

(r) other Liens securing obligations in an outstanding amount not to exceed \$5,000,000 at any one time; and

(s) Liens on the Qualified Litigation Rights and proceeds thereof, in each case solely to the extent created or deemed to exist in connection with a Permitted Litigation Financing permitted under Section 7.02(o) (including any related filings of any financing statements).

**7.4 Fundamental Changes.** Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Group Member that is not a Loan Party may be merged, amalgamated or consolidated with or into (A) any Loan Party (provided that a Loan Party shall be the continuing or surviving Person, or the continuing or surviving Person shall become a Loan Party substantially contemporaneous with such merger, amalgamation or consolidation) or (B) any Group Member that is not a Loan Party, and (ii) any Loan Party may be merged, amalgamated or consolidated with or into with any other Loan Party (provided that if such merger, amalgamation or consolidation involves the Borrower, the Borrower shall be the continuing or surviving Person);

(b) (i) any Group Member that is not a Loan Party may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Group Member or (B) pursuant to a Disposition permitted by Section 7.5; and (ii) any Loan Party (other than the Borrower) may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A)

to any other Loan Party or (B) pursuant to a Disposition permitted by Section 7.5; provided that, this clause (b) shall not permit the disposition of the Capital Stock of Appian Switzerland by Appian UK; and

(c) any Investment expressly permitted by Section 7.7 may be structured as a merger, consolidation or amalgamation.

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of obsolete or worn out property that is, in the reasonable judgement of Borrower, no longer economically practicable to maintain or useful in any material respect in the ordinary course of business of the Group Members;

(b) Dispositions of Inventory in the ordinary course of business;

(c) Dispositions permitted by Sections 7.4(b)(i)(A) and (b)(ii)(A);

(d) the sale or issuance of the Capital Stock of any Subsidiary of the Borrower (i) to the Borrower or any other Loan Party, or (ii) in connection with any transaction that does not result in a Change of Control;

(e) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) the non-exclusive licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the ordinary course of business;

(g) the Disposition of property (i) from any Loan Party to any other Loan Party, and (ii) from any Group Member (which is not a Loan Party) to any other Group Member; provided that this clause (g) will not permit the Disposition of the Capital Stock of Appian Switzerland by Appian UK, unless the Group Member to which the Capital Stock of Appian Switzerland is so disposed is also a wholly-owned Subsidiary of Appian UK;

(h) Dispositions of property subject to a Casualty Event;

(i) leases or subleases of real property;

(j) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;

(k) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;

(l) Restricted Payments permitted by Section 7.6, Investments permitted by Section 7.7 and Liens permitted by Section 7.3;

(m) any Foreign Subsidiary (other than Appian UK) may issue Capital Stock to qualified directors where required by or to satisfy any applicable Requirement of Law, including any Requirement of Law with respect to ownership of Capital Stock in Foreign Subsidiaries;

(n) Dispositions of other property having a fair market value not to exceed \$5,000,000 in the aggregate for any fiscal year of the Group Members, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such

Disposition; and provided further that the Net Cash Proceeds thereof are used to prepay the Term Loans in accordance with Section 2.12(e); and

(o) Dispositions of Qualified Litigation Rights in connection with any Permitted Litigation Financing so long as no Event of Default has occurred and is continuing at the time the definitive documentation with respect to such Permitted Litigation Financing is consummated and upon the incurrence of any such Permitted Litigation Financing.

provided, however, that any Disposition made pursuant to this Section 7.5 (other than (x) Dispositions solely between Loan Parties, (y) Dispositions solely between Group Members that are not Loan Parties or (z) Dispositions between a Loan Party and a Group Member that is not a Loan Party in which the terms thereof in favor of a Loan Party are at least arm's length terms) shall be made in good faith on an arm's length basis for fair value.

**7.6 Restricted Payments.** Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, pay any earn-out payment, seller debt or deferred purchase price payments, declare or pay any dividend (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result immediately therefrom:

(a) any Group Member may make Restricted Payments to any Loan Party, and any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;

(b) each Group Member may (i) purchase common stock or common stock options from present or former officers or employees of any Group Member upon the death, disability or termination of employment of such officer or employee; provided that the aggregate amount of payments made under this clause (i) shall not exceed \$2,000,000 during any fiscal year of the Borrower, and (ii) declare and make dividend payments or other distributions payable solely in Capital Stock (other than Disqualified Stock) of the Borrower;

(c) [reserved].

(d) each Group Member may purchase, redeem or otherwise acquire Capital Stock issued by it with the proceeds received from the substantially concurrent issue of new shares of its Capital Stock (other than Disqualified Stock); provided that any such issuance is otherwise permitted hereunder (including by Section 7.5(d))

(e) (i) each Group Member may make repurchases of Capital Stock deemed to occur upon exercise of stock options or warrants if such repurchased Capital Stock represents a portion of the exercise price of such options or warrants, and (ii) each Group Member may make repurchases of Capital Stock deemed to occur upon the withholding of a portion of the Capital Stock granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting thereof);

(f) each Group Member may deliver its common Capital Stock upon conversion of any convertible Indebtedness having been issued by the Borrower; provided that such Indebtedness is otherwise permitted by Section 7.2;

(g) the Group Members may make earn-out payments, payments in respect of seller debt or deferred purchase price payments in connection with a Permitted Acquisition so long as (except in the case of ordinary course working capital adjustments) immediately after giving effect to such purchase or other acquisition, the Group Members shall be in compliance with each of the covenants set forth in

Section 7.1(a) and (b), based upon financial statements (recalculated as though the relevant payment had been made on the last day of the applicable fiscal quarter) delivered to the Administrative Agent which give pro forma effect to the making of such payment (provided that if any such payment obligations constitute Subordinated Indebtedness, such payment must be permitted under Section 7.21; and provided further, that, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter after giving pro forma effect to such payment shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which such payment was made shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis giving effect to such payment; provided further, that if such payment is made prior to the reporting for the fiscal quarter ending December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022);

(h) any Group Member may make payments in respect of Subordinated Indebtedness solely to the extent such payment is made in accordance with Section 7.21; and

(i) the Group Members may make Restricted Payments not otherwise permitted by one of the foregoing clauses of this Section 7.6; provided that the aggregate amount of all such Restricted Payments made pursuant to this clause (i) shall not exceed \$2,500,000.

**7.7 Investments.** Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "*Investments*"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to employees, officers, consultants and directors of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed \$2,500,000 at any one time outstanding;

(e) [reserved];

(f) intercompany Investments by (i) any Loan Party in any other Loan Party, (ii) any Group Member that is not a Loan Party in any other Group Member (provided that this shall not permit Investments constituting the contribution or other transfer of the Capital Stock of Appian Switzerland by Appian UK unless the transferee is a direct or indirect wholly-owned Subsidiary of Appian UK), (iii) any Loan Party in any Group Member that is not a Loan Party to the extent that (A) no Default or Event of Default exists or would result therefrom, and (B) such Investments do not exceed \$5,000,000 in any fiscal year of the Group Members (provided, that the limit in (B) shall not apply for any intercompany Investment funded solely with the proceeds of the issuance of Capital Stock of the Borrower which is used for Permitted Acquisitions) or (iv) any Loan Party in any Subsidiary (which is not a Guarantor) for amounts arising from customary transfer pricing or cost-plus services agreements entered into in the ordinary course of business and on terms that are, when taken as a whole and in the good faith judgment of the Borrower, no less favorable to the Loan Parties than would be obtained in arm's length transactions with a nonaffiliated third party;

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

(i) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment;

(j) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does exceed \$5,000,000 during any fiscal year of the Group Members;

(k) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(l) [reserved];

(m) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions; and

(n) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a "**Permitted Acquisition**"); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with such asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is permitted by Section 7.16;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, could reasonably be expected to result in the existence or incurrence of a Material Adverse Effect;

(iv) the Borrower shall give the Administrative Agent at least fifteen (15) Business Days' (or such later date as agreed to by the Administrative Agent in its sole discretion) prior written notice of any such purchase or acquisition;

(v) the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(vi) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its assets;



(vii) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing and (y) immediately after giving effect to such purchase or other acquisition, the Group Members shall be in compliance with each of the covenants set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent which give effect, on a Pro Forma Basis, to such acquisition or other purchase (provided that, (1) at any time until (and including) the Cash Flow Trigger Date, the Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio as of the last day of the most recently ended fiscal quarter after giving pro forma effect to such acquisition or other purchase shall not exceed the lesser of (I) the then-prevailing Consolidated Total Indebtedness to Recurring Revenue Leverage Ratio permitted pursuant to Section 7.1(a)(ii), and (II) 0.75:1.00 and (2) at any time after the Cash Flow Trigger Date, the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the date on which such acquisition or other purchase is consummated shall not exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio covenant compliance level set forth in Section 7.1(b)(ii) for the most recently reported fiscal quarter end, on a pro forma basis giving effect to such acquisition or other purchase; provided further, that if such Permitted Acquisition is consummated prior to the reporting for the fiscal quarter ending December 31, 2022 the most recently ended fiscal quarter shall be deemed to be June 30, 2022 until the Borrower's financial statements for the fiscal quarter ending September 30, 2022 are available, and thereafter September 30, 2022);

(viii) the Borrower shall not, based upon the knowledge of the Borrower as of the date any such acquisition or other purchase is consummated, reasonably expect such acquisition or other purchase to result in a Default or an Event of Default under Section 8.1(c), at any time during the term of this Agreement, as a result of a breach of any of the financial covenants set forth in Section 7.1;

(ix) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2(j);

(x) such purchase or acquisition shall not constitute an Unfriendly Acquisition;

(xi) (A) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by such Group Member in connection with any particular Permitted Acquisition shall not exceed \$50,000,000 (\$25,000,000 if Liquidity is less than or equal to \$150,000,000 at the time of such Permitted Acquisition), and (B) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by all Group Members in connection with all such Permitted Acquisitions consummated from and after the Closing Date shall not exceed \$100,000,000;

(xii) the assets being acquired or the target whose stock is being acquired did not have losses in respect of pro forma Consolidated Adjusted EBITDA (calculated as though all references to Group Members contained in such definition or any other defined term used in such definition refer to the target) greater than \$10,000,000 (after taking into account reasonable adjustments, including the effects of proposed consolidation and restructuring by Borrower after such proposed purchase or acquisition) during the twelve (12) month consecutive period most recently concluded prior to the date the agreement to consummate such proposed purchase or acquisition is effective; and

(xiii) either (A) each such proposed purchase or acquisition is of a Person organized under the laws of the United States and engaged in business activities primarily conducted within the United States and which becomes a Loan Party or Collateral hereunder or (B) the aggregate amount of the consideration (excluding Capital Stock of the Borrower that is not Disqualified Stock) paid by all of the Group Members with respect to assets which will not become part of the Collateral or a Person that will not become a Loan Party shall not exceed \$20,000,000 (\$10,000,000 if Liquidity is less than or equal to \$150,000,000 at the time of such Permitted Acquisition) (which amount in this clause (xiii)(B) shall be a sublimit of the consideration caps set forth in clause (xi) above and not in addition to such limits);

**7.8 ERISA.** The Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any material liability to the Borrower or any ERISA

Affiliate, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a material liability to any ERISA Affiliate, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could result in any material liability to any ERISA Affiliate, (e) permit the present value of all nonforfeitable accrued benefits under any Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) materially to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

**7.9 Optional Payments and Modifications of Certain Preferred Stock and Debt Instruments.** (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock (i) that would move to an earlier date the scheduled redemption date (but only to the extent that moving any such scheduled redemption date would result in the redemption to be prior to ninety-one (91) days after the latest of the Revolving Termination Date or Term Loan Maturity Date) or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party; or (b) other than pursuant to any refinancing or replacement of Indebtedness permitted by Section 7.2, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Indebtedness permitted by Section 7.2 (other than Indebtedness pursuant to any Loan Document and Subordinated Indebtedness which is addressed in Section 7.21) that would shorten the maturity (but only to the extent such shortening, would result in the maturity of such Indebtedness to be prior to ninety-one (91) days after the Revolving Termination Date) or increase the amount of any payment of principal thereof or the rate of interest thereon or shorten any date for payment of interest thereon or that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party.

**7.10 Transactions with Affiliates.** Directly or indirectly, enter into or permit to exist any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

**7.11 Sale Leaseback Transactions.** Enter into any Sale Leaseback Transaction, except in connection with transactions that would be permitted under this Section 7 (and in no event in respect of any Intellectual Property).

**7.12 Swap Agreements.** Enter into any Swap Agreement, except Specified Swap Agreements which are entered into by a Group Member to (a) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (b) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member.

**7.13 Accounting Changes.** Make any change in its (a) accounting policies or reporting practices, except in accordance with GAAP, or (b) fiscal year.

**7.14 Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the

assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as (i) any such prohibition contained in any such agreement applies solely with respect to the creation, incurrence, assumption or sufferance by such Subsidiary of a Lien upon assets that are not Collateral, and (ii) such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein, and (e) any restriction pursuant to any document, agreement or instrument governing or relating to any Lien permitted under Sections 7.3(c), (m) and (n) or any agreement or option to Dispose any asset of any Group Member, the Disposition of which is permitted by any other provision of this Agreements (in each case, provided that any such restriction relates only to the assets or property subject to such Lien or being Disposed).

**7.15 Clauses Restricting Subsidiary Distributions.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, or (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby (v) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein, or (vi) any restriction pursuant to any document, agreement or instrument governing or relating to any Lien permitted under Section 7.3(c), (m) and (n) (provided that any such restriction relates only to the assets or property subject to such Lien or being Disposed).

**7.16 Lines of Business.** Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Group Members are engaged on the date of this Agreement or that are reasonably related, ancillary, complementary, or incidental thereto, or representing a reasonable expansion thereof.

**7.17 Designation of other Indebtedness.** Designate any Indebtedness or indebtedness other than the Obligations as “Designated Senior Indebtedness” or a similar concept thereto, if applicable, except to the extent otherwise permitted hereunder.

**7.18 [Reserved].**

**7.19 Amendments to Organizational Agreements and Material Contracts.** (a) Amend or permit any amendments to any Loan Party’s or Appian UK’s organizational documents, without prior notice to the Administrative Agent (provided that no amendments to any such organizational documents may be entered into to the extent that such amendments could reasonably be expected to be materially adverse to the Secured Parties); or (b) amend or permit any amendments to, or terminate or waive any provision of, any material Contractual Obligation if such amendment, termination, or waiver would be adverse to the Administrative Agent or the Lenders in any material respect.

**7.20 Use of Proceeds.** Use the proceeds of any Loan or extension of credit hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or

carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board; (b) to finance an Unfriendly Acquisition; (c) to make any payment to a Sanctioned Person or Sanctioned Entity, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person or to otherwise fund, in violation of any Sanctions, any activities of or business with any Sanctioned Person or in any Designated Jurisdiction, or in any other manner that will result in a violation by any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, Issuing Lender, Swingline Lender, or otherwise of Sanctions (or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity in violation of the foregoing); or (d) for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, any Anti-Money Laundering Laws or other similar legislation in other jurisdictions.

#### **7.21 Subordinated Debt.**

(a) Amendments. Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Group Members' ability to pay and perform each of their Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

(b) Payments. Make any payment (including any interest payment, other than paid-in-kind interest), prepayment or repayment on, redemption, exchange or acquisition for value of, any sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

**7.22 Anti-Terrorism Laws.** Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities in violation of Sanctions: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (a "**Blocked Person**"), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act.

### **SECTION 8 EVENTS OF DEFAULT**

**8.1 Events of Default.** The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay any amount of principal of any Loan when due in accordance with the terms hereof; or the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in, Section 5.3, Section 6.2 (other than Section 6.2(b)), clause (i) of Section 6.5(a), Section 6.8(a), Section 6.10, Section 6.15 or Section 7 of this Agreement or (ii) an “Event of Default” under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance (i) Section 6.1 or Section 6.2(b) and such default shall continue unremedied for a period of five (5) Business Days thereafter or (ii) of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied for a period of thirty (30) days thereafter; or

(e) (i) any Group Member shall (A) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; (B) default in making any payment of any interest, fees, costs or expenses on any such Indebtedness (other than the Loans) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (C) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (D) default in the observance or performance of any other agreement or condition relating to any such Indebtedness (other than the Loans) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (1) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (2) to cause, or to permit, with the giving of notice if required, any Group Member to purchase, redeem, mandatorily prepay or make an offer to purchase, redeem or mandatorily prepay such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in any of clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall have occurred with respect to Indebtedness, the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate for all such Indebtedness, exceeds \$5,000,000; or (ii) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed, undischarged or unbonded for a period of sixty (60) days (provided that, during such sixty (60) day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof (provided that, during such sixty (60) day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of \$5,000,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds \$5,000,000; or

(h) there is entered against any Group Member (i) one or more final judgments or orders for the payment of money involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) all such judgments or decrees shall not have been paid, vacated, discharged, stayed or bonded pending appeal within forty-five (45) days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(i) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business that has, or could reasonably be expected to have individually or in the aggregate, a Material Adverse Effect; or

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(k) a Change of Control shall occur; or

(l) [reserved]; or

(m) any of the Governmental Approvals necessary for any of the Group Members to operate its respective business shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term that has, or could reasonably be expected to have, a Material Adverse Effect, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of the Governmental Approvals or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or nonrenewal (x) has, or could reasonably be expected to have, a Material Adverse Effect, or (y) materially adversely affects the legal qualifications of any Group Member to hold any material Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or nonrenewal could reasonably be expected to materially adversely affect the status of or legal qualifications of any Group Member to hold any material Governmental Approval in any other jurisdiction; or

(n) any Loan Document (including the subordination provisions of any subordination or intercreditor agreement governing Subordinated Indebtedness) not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document.

**8.2 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to any Loan Party, the Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Term Loan Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Term Loan Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Cash Management Bank may terminate any Cash Management Agreement then outstanding and declare all Obligations then owing by the Group Members under any such Cash Management Agreements then outstanding to be due and payable forthwith, whereupon the same shall immediately become due and payable; and (iv) the Administrative Agent may exercise on behalf of itself, any Cash Management Bank, the Lenders and the Issuing Lender all rights and remedies available to it, any such Cash Management Bank, the Lenders and the Issuing Lender under the Loan Documents.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 105% (110% in the case of any Letter of Credit in a currency other than Dollars) of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3.

In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by any applicable Cash Management Bank, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Cash Management Services then outstanding, which Cash Collateralized amounts shall be applied by the Administrative Agent to the payment of all such outstanding Cash Management Services, and any unused portion thereof remaining after all such Cash Management Services shall have been fully paid and satisfied in full shall be applied by the Administrative Agent to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents in accordance with the terms of Section 8.3.

(c) After all such Letters of Credit and Cash Management Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Cash Management Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

**8.3 Application of Funds.** After the exercise of remedies provided for in Section 8.2 or following non-payment of the Obligations at maturity, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21 (including interest thereon)) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and Letter of Credit Fees) payable to the Lenders, the Issuing Lender ((including any Letter of Credit Fronting Fees and Issuing Lender Fees), and any Qualified Counterparty and any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and the reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender, and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to the extent that the Swingline Lender has advanced any Swingline Loans that have not been refunded by each Lender's Swingline Participation Amount, payment to the Swingline Lender of that portion of the Obligations constituting the unpaid principal of and interest upon the Swingline Loans advanced by the Swingline Lender;

Fourth, to the payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest in respect of any Cash Management Services and on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, and to payment of premiums and other fees (including any interest thereon) under any Specified Swap Agreements and any Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Disbursements which have not yet been converted into Revolving Loans, and settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements (but in the case of Specified Swap Agreements and Cash Management Agreements, in an aggregate amount under this clause fifth (with any greater amounts to be included in clause seventh below), not to exceed (for any provider of Specified Swap Agreements and Cash Management Agreements and their Affiliates taken as a whole) \$10,000,000 in respect of all Specified Swap Agreements and Cash Management Agreements provided by such providers and their Affiliates taken as a whole), in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any applicable Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fifth and payable to them;

Sixth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn Dollar Equivalent amount of Letters of Credit pursuant to Section 3.10;

Seventh, for the account of any applicable Qualified Counterparty and any applicable Cash Management Bank, to any settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements not paid pursuant to clause Fifth and to cash collateralize Obligations arising under any then outstanding Specified Swap Agreements and Cash Management Services, in each case, ratably among them in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations described in this clause Eighth and payable to them; and

Last, the balance, if any, after the Discharge of Obligations, to the Borrower or as otherwise required by Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn Dollar Equivalent amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral



for Letters of Credit after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, no Excluded Swap Obligation of any Guarantor shall be paid with amounts received from such Guarantor or from any Collateral in which such Guarantor has granted to the Administrative Agent a Lien (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement; provided, however, that each party to this Agreement hereby acknowledges and agrees that appropriate adjustments shall be made by the Administrative Agent (which adjustments shall be controlling in the absence of manifest error) with respect to payments received from other Loan Parties to preserve the allocation of such payments to the satisfaction of the Obligations in the order otherwise contemplated in this Section 8.3.

## SECTION 9 THE ADMINISTRATIVE AGENT

### 9.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders, the Issuing Lender, and the Swingline Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or obligations, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each of the Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty and provider of Cash Management Services) hereby irrevocably (i) authorizes the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement and any subordination or intercreditor agreements, and (ii) appoints and authorizes the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

**9.2 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

**9.3 Exculpatory Provisions.** The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to

it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

**9.5 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (except with respect to defaults in the payment of regularly scheduled principal and interest payments required to be paid to the Administrative Agent for the account of the Lenders to the extent that the Administrative Agent has actual knowledge of such payment default, such events a “*specified payment default*”) unless the Administrative Agent has received notice in writing from a Lender or a Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “*notice of default*.” In the event that the Administrative Agent receives such a notice (or has actual knowledge of the occurrence of a specified payment default), the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**9.6 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any Affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any

Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

**9.7 Indemnification.** Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Loan Parties to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Loan Parties; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

**9.8 Agent in Its Individual Capacity.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Group Members or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.9 Successor Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent approved by the Required Lenders meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

#### **9.10 Collateral and Guaranty Matters.**

(a) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (A) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, Cash Management Agreements and Specified Swap Agreements (other than Letters of Credit, Cash Management Agreements and Specified Swap Agreements as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender, Cash Management Bank or the provider of such Specified Swap Agreement shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder, or (C) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.3(g) and (i); and

(iii) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(iv) (x) automatically upon the consummation of any Permitted Litigation Financing to the extent such Permitted Litigation Rights solely involves a Disposition (rather than a grant of a security interest) of the Qualified Litigation Rights being financed, to release any Lien on such Qualified Litigation Rights disposed in connection with such Permitted Litigation Financing, without the need to deliver any instrument or performance of any act by any Person and (y) upon the consummation of any Permitted Litigation Financing where the Borrower retains title to the Qualified Litigation Rights being financed to the extent such Permitted Litigation Rights solely involves a grant of a security interest (rather than a Disposition) of such Qualified Litigation Rights to the provider of such Permitted Litigation Financing, to subordinate Administrative Agent's Lien on such Qualified Litigation Rights.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the guaranty pursuant to this Section 9.10.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Notwithstanding anything contained in any Loan Document, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guaranty of the Obligations (including any such guaranty provided by the Guarantors pursuant to the Guarantee and Collateral Agreement), it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof; provided that, for the avoidance of doubt, in no event shall a Secured Party be restricted hereunder from filing a proof of claim on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law or any other judicial proceeding. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of such Secured Party (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, to have agreed to the foregoing provisions. In furtherance of the foregoing, and not in limitation thereof, no Specified Swap Agreement and no Cash Management Agreement, the Obligations under which constitute Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the Obligations of any Loan Party under any Loan Document except as expressly provided herein or in the Guarantee and Collateral Agreement. By accepting the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, any Secured Party that is a Cash Management Bank or a Qualified Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and to have agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

**9.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable and documented compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.12 No Other Duties, etc.** Anything herein to the contrary notwithstanding, none of the “Bookrunners,” “Arrangers,” or “Co-Documentation Agents” listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

**9.13 Cash Management Bank and Qualified Counterparty Reports.** Each Cash Management Bank and each Qualified Counterparty agrees to furnish to the Administrative Agent, as frequently as the Administrative Agent may reasonably request, with a summary of all Obligations in respect of Cash Management Services and/or Specified Swap Agreements, as applicable, due or to become due to such Cash Management Bank or Qualified Counterparty, as applicable. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Cash Management Bank or Qualified Counterparty (in its capacity as a Cash Management Bank or Qualified Counterparty and not in its capacity as a Lender) unless the Administrative Agent has received written notice thereof from such Cash Management Bank or Qualified Counterparty and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Cash Management Bank or Qualified Counterparty on account of Cash Management Services or Specified Swap Agreements are set forth in such notice.

**9.14 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified

Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(b) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

#### **9.15 Recovery of Erroneous Payments.**

(a) If the Administrative Agent notifies a Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party (any such Lender, Issuing Lender, Swingline Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Lender, Swingline Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Lender, Swingline Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and



including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Lender, Swingline Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Lender, Swingline Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.15(b).

(c) Each Lender, Issuing Lender, Swingline Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Lender, Swingline Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Lender, Swingline Lender or Secured Party from any source, against any amount due to the Administrative Agent under clause (a) hereof or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with clause (a) hereof, from any Lender, Issuing Lender or Swingline Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender, Issuing Lender or Swingline Lender at any time, (i) such Lender, Issuing Lender or Swingline Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender, Issuing Lender or Swingline Lender shall deliver any Notes evidencing such Loans to Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous

Payment Deficiency Assignment and the assigning Lender or assigning Issuing Lender or assigning Swingline Lender shall cease to be a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, assigning Issuing Lender or assigning Swingline Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender, Issuing Lender or Swingline Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender, Issuing Lender or Swingline Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender, Issuing Lender or Swingline Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Lender, Swingline Lender or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “*Erroneous Payment Subrogation Rights*”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 9.15 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, Swingline Lender or Issuing Lender, or the Discharge of Obligations.

**9.16 Survival.** This Section 9 shall survive the Discharge of Obligations.

## SECTION 10 MISCELLANEOUS

### 10.1 Amendments and Waivers.

(a) Neither this Agreement, any other Loan Document (other than any L/C Related Document), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that (in addition to the Required Lender’s consent set forth above) no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the

scheduled date of any amortization payment (including, for the avoidance of doubt, any payment due on the Term Loan Maturity Date) in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder, including any waiver, amendment, supplement or modification of Section 2.27(e)(vi) or the MFN Protection (except that no amendment or modification of defined terms used in the financial covenants in this Agreement or waiver of any Default or Event of Default or the right to receive interest at the Default Rate) shall constitute a reduction in the rate of interest or fees for purposes of this clause (A) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment or Term Loan Commitment, in each case, without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) reduce any percentage (or the requirement for at least two unaffiliated Lenders) specified in the definition of Required Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents or permit the assignment of Loans or Commitments by any Lender to the Borrower, any of the Borrower's Subsidiaries, the Permitted Investor or any of the Borrower's or Permitted Investor's Affiliates, release all or substantially all of the Collateral, contractually subordinate the Obligations (including any guarantees thereof) or the Administrative Agent's Lien on all or substantially all of the Collateral, or release all or substantially all of the value of the guarantees (taken as a whole) of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) (i) amend, modify or waive the *pro rata* requirements of Section 2.10 or Section 2.18 or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders in a manner that adversely affects Revolving Lenders (or any of them) without the written consent of each Revolving Lender (it being understood that a non-ratable commitment reduction other than in connection with Section 2.23 or Section 2.24 is deemed to have an adverse effect) or (ii) amend, modify or waive the *pro rata* requirements of Section 2.10 or Section 2.18 or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders in a manner that adversely affects Term Loan Lenders or the L/C Lenders (or any of them) (it being understood that a non-ratable commitment reduction other than in connection with Section 2.23 or Section 2.24 is deemed to have an adverse effect) without the written consent of each Term Loan Lender and/or, as applicable, each L/C Lender; (E) [reserved]; (F) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (G) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (H) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (I) (i) amend or modify the application of prepayments set forth in Section 2.12(e) or the application of payments set forth in Section 8.3 without the written consent of each Lender and the Issuing Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Cash Management Bank, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Related Documents without the consent of the Administrative Agent or any other Lender and the Issuing Lender, Administrative Agent and the Borrower may make customary technical amendments if any Letter of Credit shall be issued hereunder in a currency other than U.S. Dollars. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower requests that this Agreement or any of the other Loan Documents be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower, the Administrative Agent and the Required

Lenders, this Agreement or such other Loan Document may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a “*Minority Lender*”), to provide for:

(i) the termination of the Commitment of each such Minority Lender;

(ii) the assumption of the Loans and Commitment of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and

(iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) [Reserved].

(d) Notwithstanding any other provision, no consent of any Lender (or other Secured Party other than the Administrative Agent) shall be required to effectuate any amendment to implement any Incremental Revolving Commitment or Incremental Term Loan permitted by Section 2.27 or to effect an alternate interest rate in a manner consistent with Section 2.17.

(e) Notwithstanding any provision herein to the contrary, any Cash Management Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

(f) Notwithstanding any provision herein or in any other Loan Document to the contrary, no Cash Management Bank and no Qualified Counterparty shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of Cash Management Services or Specified Swap Agreements or Obligations owing thereunder, nor shall the consent of any such Cash Management Bank or Qualified Counterparty, as applicable, be required for any matter, other than in their capacities as Lenders, to the extent applicable.

(g) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the Loan Documents to cure any omission, mistake or defect.

**10.2 Notices.** All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower: Appian Corporation  
7950 Jones Branch Dr.  
McLean, VA 22102  
Attention: Mark Matheos, Chief Financial Officer with a copy  
to Chris Winters, General Counsel

E-Mail: mark.matheos@appian.com with a copy to  
chris.winters@appian.com  
Website URL: www.appian.com

Administrative Agent: Silicon Valley Bank  
1200 17<sup>th</sup> St., 16<sup>th</sup> Floor  
Denver, CO 80202  
Attention: Will Deevy  
E-Mail: wdeevy@svb.com

With a copy (which shall not constitute notice) to:

Morrison & Foerster LLP  
200 Clarendon Street  
Boston, Massachusetts 02116  
Attention: Charles W. Stavros, Esq.  
E-Mail: cstavros@mofo.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(a) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(b) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(c) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in

connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform. “**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

**10.5 Expenses; Indemnity; Damage Waiver.**

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary outside legal counsel for the Administrative Agent and, if necessary or appropriate, one local counsel in each relevant jurisdiction (and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable and documented fees, charges and disbursements of one primary outside counsel and if necessary or appropriate, one local counsel in each relevant jurisdiction for the Administrative Agent or the Lenders, taken as a whole, which shall be counsel to the Administrative Agent (and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one counsel and, if necessary or appropriate, one local counsel in each relevant jurisdiction, for the Administrative Agent and the Lenders, taken as a whole, and in the case of any actual or perceived conflict of interest, additional counsel for a Lender or a group of Lenders, as appropriate), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result

of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Group Members, or any Environmental Liability related in any way to the Group Members, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction; and provided further, that neither Borrower nor any other Loan party shall have any liability to any Indemnitee hereunder for indirect, special, incidental or consequential damages (except any such claims brought against such Indemnitee by a third party (and not the Administrative Agent, any Lender or any Related Parties of the Administrative Agent or any other Lender)). This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower and each other Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the Discharge of Obligations.

#### **10.6 Successors and Assigns; Participations and Assignments.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which, for purposes of this Section 10.6, shall include any Cash Management Bank and any Qualified Counterparty, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of Section 10.6(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or \$5,000,000, in the case of any assignment in respect of the Term Loan Facility, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof, and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis. Notwithstanding the forgoing or anything herein to the contrary, the L/C Facility is a sublimit of the Revolving Facility and the commitments and obligations in respect of the Revolving Facility and the L/C Facility shall be assigned on a pro rata basis with each other.



(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof, and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Facility or any unfunded Commitments with respect to the Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lender and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates (including for the avoidance of doubt the Permitted Investor and its Affiliates) or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee

thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered by such Participant to the Lender granting such participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 2.23 as if it were an assignee under Section 10.6(b); and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and

address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Notes.** The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) **Representations and Warranties of Lenders.** Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Commitments and Loans; and (iii) it will make or invest in its Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

## **10.7 Adjustments; Set-off.**

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "**Benefitted Lender**") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being expressly waived by each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the

account of any Loan Party, against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

**10.8 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the Discharge of Obligations.

**10.9 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude optional prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **10.10 Counterparts; Electronic Execution of Assignments.**

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of an original executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

(b) The words "execution," "signed," "signature," and words of like import in this Agreement or any Loan Document or any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law,

including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.11 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.12 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**10.13 GOVERNING LAW. THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.** This Section 10.13 shall survive the Discharge of Obligations.

**10.14 Submission to Jurisdiction; Waivers.** Each party hereto hereby irrevocably and unconditionally:

(a) agrees that all disputes, controversies, claims, actions and other proceedings involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement, any other Loan Document, any contemplated transactions related hereto or thereto, or the relationship between any Loan Party, on the one hand, and the Administrative Agent or any Lender or any other Secured Party, on the other hand, and any and all other claims of any Group Member against the Administrative Agent or any Lender or any other Secured Party of any kind, shall be brought only in a state court located in the Borough of Manhattan, or in a federal court sitting in the Borough of Manhattan; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender or any other Secured Party from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender or any other Secured Party. The Borrower, on behalf of itself and each other Loan Party, (i) expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court and to the selection of any referee referred to below, (ii) hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court, and (iii) agrees that it shall not file any motion or other application seeking to change the venue of any such suit or other action. The Borrower, on behalf of itself and each other Loan Party, hereby waives personal service of any summons, complaints, and other process issued in any such action or suit and agrees that service of any such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) **WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY, AMONG ANY OF THE PARTIES HERETO AND THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THE BORROWER AND EACH OTHER LOAN PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;**

(c) [reserved]; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages; provided that nothing contained herein shall limit the right of any Indemnitee to be indemnified as provided in this Agreement and the other Loan Documents.

This Section 10.14 shall survive the Discharge of Obligations.

**10.15 Acknowledgements.** The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) in connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower, on behalf of each Group Member, acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, and the Lenders and any Affiliate thereof are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective applicable Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, its Affiliates, each Lender and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, its Affiliates, the Lenders and their Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, its Affiliates, each Lender and any of their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Group Members and the Lenders.

## 10.16 Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral (other than any cash collateral securing any Specified Swap Agreements, any Cash Management Services or outstanding Letters of Credit) shall be released from the Liens created by the Security Documents (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements), and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements) shall terminate, all without delivery of any instrument or performance of any act by any Person.

**10.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating any Group Member or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower. In addition, the Administrative Agent, the Lenders, and any of their respective Related Parties, may (A) disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments; and (B) use any information (not constituting Information subject to the foregoing confidentiality restrictions) related to the syndication and arrangement of the credit facilities contemplated by this Agreement and the Borrower's logo in connection with marketing, league tables, press releases, or other transactional announcements or updates provided to investor or trade publications, including the placement of "tombstone" advertisements in publications of its choice at its own expense.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws, rules, and regulations.

For purposes of this Section, “**Information**” means all information received from the Group Members relating to the Group Members or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Group Members; provided that, in the case of information received from the Group Members after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**10.18 Automatic Debits.** With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of the Administrative Agent or any Lender payable by the Borrower hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent’s sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

**10.20 Patriot Act; Other Regulations.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party and certain related parties thereto, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party and certain of their beneficial owners and other officers in accordance with the Patriot Act and the Beneficial Ownership Regulation. The Borrower and each other Loan Party will, and will cause each of their respective Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and documents and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws.

**10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in this Agreement or in any other Loan Document or in any



other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**10.22 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Agreements or any other agreement or instrument that is a QFC (such support, “*QFC Credit Support*”, and each such QFC, a “*Supported QFC*”), the parties hereto hereby acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

(i) “*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(ii) “**Covered Entity**” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(iii) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[Remainder of page left blank intentionally]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

**APPIAN CORPORATION**

By: \_\_

Name: \_\_

Title: \_\_

**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK**

By: \_\_

Name: \_\_

Title: \_\_

**LENDERS:**

**SILICON VALLEY BANK,**  
as Issuing Lender, Swingline Lender and as a Lender

By: \_\_

Name: \_\_

Title: \_\_

**SCHEDULE 1.1A  
COMMITMENTS  
AND AGGREGATE EXPOSURE PERCENTAGES**

**TERM LOAN COMMITMENTS**

Lender	Outstanding Term Loans <sup>1</sup>	Term Loan Percentage
Silicon Valley Bank	\$50,000,000.00	41.66667%
Wells Fargo Bank, N.A.	\$26,666,666.67	22.22222%
Comerica Bank	\$23,333,333.33	19.44444%
MUFG Bank, Ltd.	\$20,000,000.00	16.66667%
Total	\$120,000,000.00	100.00000%

Lender	First Amendment Term Loan Commitment <sup>2</sup>	Term Loan Percentage
MUFG Bank, Ltd.	\$20,000,000.00	100.00000%
Total	\$20,000,000.00	100.00000%

**REVOLVING COMMITMENTS**

Lender	Revolving Commitment <sup>3</sup>	Revolving Percentage
Silicon Valley Bank	\$25,000,000.00	41.66667%
Wells Fargo Bank, N.A.	\$13,333,333.33	22.22222%
Comerica Bank	\$11,666,666.67	19.44444%
MUFG Bank, Ltd.	\$10,000,000.00	16.66667%
Total	\$60,000,000.00	100.00000%

<sup>1</sup> As of the First Amendment Effective Date

<sup>2</sup> As of the First Amendment Effective Date

<sup>3</sup> As of the First Amendment Effective Date

### L/C COMMITMENT

Lender	L/C Commitment <sup>4</sup>	L/C Percentage
Silicon Valley Bank	\$6,250,000.00	41.66667%
Wells Fargo Bank, N.A.	\$3,333,333.33	22.22222%
Comerica Bank	\$2,916,666.67	19.44444%
MUFG Bank, Ltd.	\$2,500,000.00	16.66667%
Total	\$15,000,000.00	100.00000%

### SWINGLINE COMMITMENT

Lender	Swingline Commitment	Exposure Percentage
Silicon Valley Bank	\$10,000,000.00	100.0000000%
Total	\$10,000,000.00	100.0000000%

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<sup>4</sup> As of the First Amendment Effective Date

**Subsidiaries of Appian Corporation**

<b>Name of Subsidiary</b>	<b>Jurisdiction of Organization</b>
Appian Europe Ltd.	England and Wales
Appian Software International GmbH	Switzerland (Zug Canton)
Appian Netherlands BV	Netherlands
Appian Software Australia Pty. Ltd	Australia
Appian France SARL	France
Appian Software Italy S.R.L.	Italy
Appian Software Germany GmbH	Germany
Appian Singapore Pte. Ltd.	Singapore
Appian Spain SL	Spain
Appian Sweden AB	Sweden
Appian Japan GK	Japan
Appian Canada Corporation	Canada
Appian Mexico Software SRL de C.V.	Mexico
Appian Computer Technologies India Private Ltd	India
Appian Portugal Unipessoal LDA	Portugal

Consent of Independent Registered Public Accounting Firm

Appian Corporation  
McLean, Virginia

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-258903) and Form S-8 (No. 333-218342 and 333-259268) of Appian Corporation of our reports dated February 16, 2023, relating to the consolidated financial statements, and the effectiveness of Appian Corporation's internal control over financial reporting, which appear in this Annual Report on Form 10-K.

/s/ BDO USA, LLP

McLean, Virginia

February 16, 2023



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Matthew Calkins, certify that:

1. I have reviewed this Annual Report on Form 10-K for the period ended December 31, 2022 of Appian Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: February 16, 2023

/s/ Matthew Calkins  
\_\_\_\_\_  
Matthew Calkins  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark Matheos, certify that:

1. I have reviewed this Annual Report on Form 10-K for the period ended December 31, 2022 of Appian Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: February 16, 2023

/s/ Mark Matheos

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Mark Matheos

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

**CERTIFICATIONS OF  
PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Matthew Calkins, Chief Executive Officer of Appian Corporation (the “Company”), and Mark Matheos, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Annual Report on Form 10-K for the period ended December 31, 2022, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**IN WITNESS WHEREOF**, the undersigned have set their hands hereto as of the 16th day of February, 2023.

/s/ Matthew Calkins

\_\_\_\_\_  
Matthew Calkins

Chief Executive Officer

(Principal Executive Officer)

/s/ Mark Matheos

\_\_\_\_\_  
Mark Matheos

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

- \* This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.