

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

x

For the fiscal year ended December 31, 2019

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 000-52049

**SYNCHRONOSS TECHNOLOGIES, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**06-1594540**

(I.R.S. Employer  
Identification No.)

**200 Crossing Boulevard, 8th Floor  
Bridgewater, New Jersey**

(Address of principal executive offices)

**08807**

(Zip Code)

**(866) 620-3940**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.0001 par value	SNCR	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

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

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the common stock held by non-affiliates of the Registrant as of June 28, 2019, the last business day of the Registrant's last completed second quarter, based upon the closing price of the common stock as reported by The Nasdaq Stock Market on such date was approximately \$331.7 million. Shares of common stock held by each executive officer, director and stockholders known by the Registrant to own 10% or more of the outstanding stock based on public filings and other information known to the Registrant have been excluded since such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 10, 2020, a total of 44,564,306 shares of the Registrant's common stock were outstanding.  
The exhibit index as required by Item 601(a) of Regulation S-K is included in Item 15 of Part IV of this report on Form 10-K.

### **DOCUMENTS INCORPORATED BY REFERENCE**

Information required by Part III (Items 10, 11, 12, 13 and 14) is incorporated by reference to portions of the Registrant's definitive Proxy Statement for its 2020 Annual Meeting of Stockholders (the "Proxy Statement"), which is to be filed pursuant to Regulation 14A within 120 days after the end of the Registrant's fiscal year ended December 31, 2019. Except as expressly incorporated by reference, the Proxy Statement shall not be deemed to be a part of this report on Form 10-K.

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## PART I

### FORWARD LOOKING STATEMENTS

The words “Synchronoss,” “we,” “our,” “ours,” “us” and the “Company,” refer to Synchronoss Technologies, Inc. and its consolidated subsidiaries. We were incorporated in Delaware in 2000. All statements in this Annual Report on Form 10-K for the fiscal year ended December 31, 2019 (the “Form 10-K”) that are not historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding Synchronoss’ “expectations,” “beliefs,” “hopes,” “intentions,” “anticipates,” “seeks,” “strategies,” “plans,” “targets,” “estimations,” “outlook” or the like. Such statements are based on management’s current expectations and are subject to a number of factors and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Past performance is not necessarily indicative of future results. Synchronoss cautions investors that there can be no assurance that actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements as a result of various factors. We encourage you to read Management’s Discussion and Analysis of our Financial Condition and Results of Operations and our consolidated financial statements contained in this Form 10-K. We also encourage you to read Item 1A of Part I of this Form 10-K, entitled Risk Factors, which contains a more complete discussion of the risks and uncertainties associated with our business. In addition to the risks described in Item 1A of this Form 10-K, other unknown or unpredictable factors also could affect our results. Therefore, the information in this Form 10-K should be read together with other reports and documents that we file with the Securities and Exchange Commission from time to time, including on Form 10-Q and Form 8-K, which may supplement, modify, supersede or update those risk factors. Synchronoss expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Synchronoss’ expectations with regard thereto or any change in events, conditions, or circumstances on which any such statements are based.

This Form 10-K includes industry and market data that we obtained from periodic industry publications, third-party studies and surveys, filings of public companies in our industry and internal company surveys. These sources include government and industry sources. Industry publications and surveys generally state that the information contained therein has been obtained from sources believed to be reliable. Although we believe the industry and market data incorporated into this Form 10-K to be reliable, this information could prove to be inaccurate. Industry and market data could be wrong because of the method by which sources obtained their data and because information cannot always be verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties. In addition, we do not know all of the assumptions regarding general economic conditions or growth that were used in preparing the forecasts from the sources relied upon or cited herein.

### ITEM 1. BUSINESS

#### General

Our Cloud, Messaging, Digital and Internet of Things (“IoT”) platforms help the world’s leading companies, including operators, original equipment manufacturers (“OEMs”), as well as Media and Technology providers compete in today’s markets by delivering innovative customer experiences that create high value engagement, save costs and create new monetization opportunities. With the help of our technologies and solutions, leading global companies can routinely create game changing interactions with their customers that were previously considered unachievable. Our technologies act as a catalyst to enable and unlock new capabilities in our customers’ organizations, creating new value through new experiences for their end users.

We market our solutions and services directly through our sales organizations in the Americas, Europe, Middle East and Africa (“EMEA”) and Asia-Pacific (“APAC”). Our platforms give our customers new opportunities in the Telecommunications, Media and Technology (“TMT”) space, taking advantage of the rapidly converging services, connected devices, networks and applications. Our platforms power products and solutions across the TMT marketplace allow our customers to create forward-looking and compelling customer experiences with less resources.

We deliver platforms, products and solutions including:

- Cloud sync, backup, storage, device set up, content transfer and content engagement for user generated content
- Advanced, multi-channel messaging peer-to-peer (“P2P”) communications and application-to-person (“A2P”) commerce solutions
- Digital experience management (“Platform as a Service” or “PaaS”) - including digital journey creation, journey design products and IoT systems management technology for Smart Buildings, Smart Cities, etc.

We help our customers accelerate and monetize value-add services for secure and broadband networks and connected devices. Our technologies appeal to a diverse group of customers in a converging TMT space including:

- Communication service providers (“CSP”)
- Cable operators/multi-services operators (“MSO”)
- Media and Technology Companies with multi-customer-facing channels in global markets
- OEMs with embedded connectivity (e.g. smartphones, laptops, tablets and mobile internet devices)
- IoT ecosystem participants who use a variety of technologies (e.g. Blockchain) to enable a wide array of devices (e.g. smart buildings, automobiles, connected homes, etc.) sensors, networks and systems.

Our industry-leading customers include Tier 1 mobile service providers such as AT&T Inc., BT, Verizon Wireless, Vodafone, Orange, Sprint, T-Mobile and Telstra; Tier 1 cable operators/MSOs and wireline operators like AT&T Inc., Comcast, Cablevision, Charter, CenturyLink, Mediacom and Level 3 Communications; and large OEMs such as Apple and Ericsson. These customers utilize our platforms, technology and services to service both consumer and business customers. We also service technology leaders such as Microsoft, various global System Integrators and well-known household brands such as Amazon among others.

The Synchronoss Personal Cloud Platform™ is a secure and highly scalable white label platform designed to store and sync subscribers’ personally created content seamlessly to and from current and new devices. This allows our carriers’ customers to protect, engage with and manage their personal content and gives our Operator customers the ability to increase average revenue per user (“ARPU”) through a new monthly recurring charge (“MRC”) and opportunities to mine valuable data that will give subscribers accesses to new, beneficial services. Additionally, our Personal Cloud Platform performs an expanding set of value-add services including facilitating an Operator’s initial device setup and enhancing visibility and control across disparate devices within subscribers’ smart homes.

The Synchronoss Messaging Platform is the world leader in providing a private, white-label, platform and solution stack to enable telecommunications power for hundreds of millions of subscribers’ mobile messaging and mailboxes. Our Advanced Messaging Product is a powerful, secure and intelligent white label messaging platform that expands capabilities for Operators and TMT companies to offer P2P messaging via Rich Communications Services (“RCS”). Additionally, our Advanced Messaging Product powers commerce and a robust ecosystem for Operators, brands and advertisers to execute A2P commerce and data-rich dialogue with subscribers. Our Mobile Messaging Platform (“MMP”) is poised to provide a single standard ecosystem onboarding and management to brands, advertisers and message wholesalers across Japan, North America and EMEA.

The Synchronoss Digital Platform is a suite of technology, tools and solutions that includes digital experience creation and management, automated provisioning, artificial intelligence and financial analytics and service a broad swatch of TMT and IoT markets.

Digital Experience Platform (“DXP”) is a purpose-built, low-code experience creation and management toolset that sits between our customers’ end-user facing applications and their existing back end systems, enabling the authoring and management of customer journeys in a cloud-native no/low-code environment. This platform can be operated by IT professionals and citizen developers (business analysts, etc.) enabling our customers to bring more compelling and complex experiences to market in less time with fewer and more diverse resources in a real-time, collaborative environment.

Digital Activation Platform has been a foundational technology for Synchronoss that was used to remote activate subscriber accounts for the first iPhone® that launched in 2007. Since then, Activation has been integrated as a core function within the Digital Experience Platform. This functionality allows Operators and indirect mobility resellers to easily activate mobility plans with carriers without requiring a large dedicated team. It gives these companies the flexibility to conform the journey to support multiple front ends and customer systems at 1/20th of the time and cost.

Diversified Digital Solution Suite is a highly specialized collection of offerings designed to create automated workflows to help Operators perform complex financial analytics, validation, reconciliation and governance of supply chain and life cycle within public clouds; facilitate automated, end-to-end, telecom service order life cycle management; and provide planning, designing and maintenance of physical network assets. These technologies integrate into customer Enterprise Resource Planning systems & internal data marts, Inventory Management Systems, Operator Portal and Off-Net Trading Partners.

The Synchronoss IoT Platform is a cloud-based Software-as-a-Service (“SaaS”) solution and Advanced Analytics offering that integrates with Building Management Systems (“BMS”) and sensors to synthesize data and deliver single-pane-of-glass visibility into all control systems (HVAC, lighting, refrigeration, etc.), a company’s health, energy consumption and costs. Sophisticated machine learning algorithms generate optimal configurations to reduce overall energy consumption and costs,

reduce maintenance and lengthen control systems' lifespan. Within the Synchronoss IoT Platform portal, users have access to visualizations, dashboards, canned and Ad Hoc analysis, monitoring and tracking and notifications and alerts. Advanced Analytics packages including equipment optimization, predictive maintenance, failure prediction and anomaly detection.

## **Markets We Serve**

Our platforms, products and solutions operate in a white label capacity serving a diverse range of customers in the TMT and IoT markets.

### ***Telecommunications, Media and Technology***

TMT companies operate and/or market white label instantiations of Synchronoss Cloud, Messaging, Digital and IoT platforms, products and solutions to power new, digitally enhanced experiences for their subscribers and employees. TMT companies use Synchronoss platforms to author and manage new workflows and customer experiences, orchestrate data from existing back office systems and create personalized customer experiences across channels and touch points (e.g. online, mobile apps, call centers and care, retail, self-service, etc.). This creates new ways to interface with their customers and subscribers that can lower cost and increase revenues and satisfaction.

### ***Operators***

A foundational focus of Synchronoss, CSPs and MSOs market white label implementations of our Synchronoss Cloud, Messaging, Digital and IoT platforms, products and solutions to their subscribers around the world. CSPs and MSOs market and re-sell the value-added services powered by our technology to their subscribers as part of stand-alone subscriptions, value-added bundles or use our technologies directly to enhance their digital offerings and workflow. CSPs and MSOs license Synchronoss Personal Cloud to enhance their value-added service offerings to subscribers who purchase and lease mobile devices and network connectivity - storing and syncing their user generated content (e.g., videos, photos, documents, contacts, music etc.). CSPs and MSOs license Synchronoss Advanced Messaging and Email to enable white label multichannel messaging services including advanced P2P, A2P transactions and brand/advertiser ecosystems. CSPs and MSOs also re-sell our IoT solutions such as Smart Buildings as part of a revitalized set of Operator technology offers.

### ***Internet of Things and Smart Buildings***

Companies in the TMT space as well as OEMs and technology suppliers use Synchronoss Cloud, Messaging and Digital platforms, products and solutions to enable consumer and machine to machine ("M2M") experiences across new connected devices in the IoT market (e.g. smart homes, connected automobiles, wearable devices, smart appliances, smart buildings, smart cities, drones, etc.). Synchronoss Cloud platforms, products and solutions provide a single-source storage solution for connected devices that don't have a native data storage solution. Synchronoss Messaging platforms, products and solutions enable dialogue between devices, nodes/sensors and end users of IoT transactions. Synchronoss Digital platforms, products and solutions provide data orchestration and transaction automation capabilities to enable more targeted and secure use of data across IoT devices, networks, nodes/sensors and human participants.

## **Synchronoss Platforms, Products and Solutions**

Our platforms, products and solutions conduct business-to-consumer ("B2C"), business-to-business ("B2B"), enterprise and indirect channel (i.e., resellers/dealers) transactions. The capabilities of our platforms are designed to provide our customers with the opportunity to improve operational performance and efficiencies and identify new revenue opportunities.

Our platforms, products and solutions offer flexible, scalable, extensible and relevant solutions backed by service level agreements ("SLA's") and exception handling. Our various platforms are designed to be:

*Carrier Grade:* We design our platforms to handle high-volume transactions from carriers rapidly and efficiently, with virtually no down-time. Our platforms are also capable of simultaneously handling millions of device content related transactions on a daily basis to ensure that personal content on all subscriber devices stays fresh and synchronized with the Cloud.

*Ease of Use:* Our platforms resolve complexity with back end data and system frameworks to create simple, easy use cases to end users and subscribers. Our Digital platform provides automation of device, product and service fulfillment relieving manual workflows and providing economy of scale; it orchestrates data from various data and business silos to create new, elegant and powerful end user use cases that existing system frameworks cannot support. Our Messaging platform provides common onboarding

for third-party brands that allow them to create bots and other commerce instances and then manage them throughout the customer lifecycle. Our Cloud platform creates an easy cross platform sync and access to subscriber personal data.

*Data-driven:* Our platforms, products and solutions operate with the assistance of analytics, smart tagging, artificial intelligence, natural language processing, reporting and other data-driven insights. Our technology uses data to help shape user experiences, summarize reporting, prompt next best actions and recommendations and conduct automated dialogue with subscribers.

*Automated:* We design our platforms to eliminate manual processes and to automate otherwise labor-intensive tasks, thus improving operating efficiencies and order accuracy and cost reduction. By tracking every order and identifying those that are not provisioned properly, our platforms are designed to substantially reduce the need for manual intervention and reduce unnecessary customer service center calls. The technology of our platforms automatically guides a customer's request for service through the entire series of required steps.

*Predictable and Reliable:* We are committed to providing high-quality, dependable services to our customers. To ensure reliability, system uptime and other service offerings, our transaction management is guaranteed through SLAs. Our platforms offer a complete customer management solution, including exception handling, which we believe is one of the main factors that differentiates us from our competitors. In performing exception handling, our platforms recognize and isolate transaction orders that are not configured to specifications, process them in a timely manner and communicate these orders back to our customers, thereby improving efficiencies and reducing backlog. In the past couple years, if manual intervention is required, our exception handling services are performed through outsourced centers located in Canada and the United States and, where applicable, to other cost-effective geographies. Additionally, our database is designed to preserve data integrity while ensuring fast, efficient, transaction-oriented data retrieval methods.

*Seamless:* Our platforms integrate information across our customers' entire operation, including subscriber information, order information, delivery status, installation scheduling and content stored on the device to allow for the seamless activation and content transfer during the device purchase flow. Through our platforms, the device is automatically activated and consumer's content is available for use via the Cloud, ensuring continuity of service and reducing subscriber churn propensity. CSPs and multi-channel retailers can bundle additional applications during retail phone purchases, and also provide live updates to support new features and new devices. We have built our platforms using an open design with fully-documented software interfaces, commonly referred to as application programming interfaces ("API"). Our APIs enable our customers, strategic partners and other third parties to integrate our platforms with other software applications and to build best-in-class cloud-based applications incorporating third-party or customer-designed capabilities. Through our open design and alliance program, we believe we provide our customers with superior solutions that combine our technology with best-of-breed applications with the efficiency and cost-effectiveness of commercial, packaged interfaces.

*Scalable:* Our platforms are designed to process expanding transaction volumes reliably and cost effectively. While our transaction volume has increased rapidly since our inception, we anticipate substantial future growth in transaction volumes, and we believe our platforms are capable of scaling their output commensurately, requiring principally routine computer hardware and software updates. Our synchronization and activation platforms routinely support our customers' transactions at the highest level of demands when needed with our current production deployments. We continue to see the number of transactions for connected devices, such as smartphones, mobile Internet devices ("MID"), laptops, tablets and wirelessly enabled consumer electronics such as cameras, tablets, e-readers, personal navigation devices, global positioning system ("GPS") enabled devices, and other connected consumer electronics, to be one of the fastest growing transaction types across all our platforms, products and services. Our Synchronoss Personal Cloud platform is deployed across more than 95 million devices, managing 20 billion entities in the Cloud and performing more than 4 million synchronizations per day.

*Value-add Reporting Tools:* Our platforms' attributes are tightly integrated into the critical workflows of our customers and have analytical reporting capabilities that provide near real-time information for every step of the relevant transaction processes. In addition to improving end-user customer satisfaction, these capabilities are designed to provide our customers with value-added insights into historical and current transaction trends. We also offer mobile reporting capabilities for users to receive critical data about their transactions on connected devices.

*Build Consumer Loyalty and Create New Revenue Streams:* Our synchronization services help drive consumers to the CSPs, OEMs or multi-channel retailers by presenting them with a branded application and fully-integrated Web portal that provides convenience, security, and continuity for end user customers, which we believe helps our customers by further building the loyalty of their subscribers. Our Synchronoss Personal Cloud solution creates hundreds of millions of dollars in new revenue for operators and helps reduce subscriber churn by making it easy for subscribers to migrate smartphone content from an old device to a new device. Our Synchronoss Personal Cloud solution enables our carrier customers to sell premium value-add cloud storage solutions

as well as cloud enabling premium partner opportunities. We are designing solutions that will allow carriers, OEMs and retail distributors to promote and fulfill new services through mobile channels to better monetize their cloud subscriber base.

*Efficient:* Our platforms' capabilities provide what we believe to be a more cost-effective, efficient and productive approach to enabling new activations across services and channels. Our solutions allow our customers to reduce overhead costs associated with building and operating their own customer transaction management infrastructure. With automated activation and integrated fall out support, our e-commerce platforms centralize customer service expectations, which we believe dramatically reduces our customers' subscriber acquisition/retention costs in addition to operating expenses for training and staffing costs. We also provide our customers with the information and tools intended to more efficiently manage marketing and operational aspects of their business, as well as business intelligence required to do targeted up-selling of their products and services.

*Quick Concept to Market Delivery:* The automation and ease of integration of our on-demand platform allows our customers to accelerate the deployment of their services and new service offerings by shortening the time between a subscriber's order and the provisioning of service or activation and enabling of a connected device(s).

*Extensible and Relevant:* Our customers operate in dynamic and fast paced industries. Our platforms and solutions are built in a modular fashion, thereby conducive to be extended dynamically and enabling our customers to offer solutions that are relevant to current market situations, with the goal of providing them with the competitive edge required for them to be successful. The platforms are also designed to be highly customizable to each carrier's specific back end systems as well as branding requirements.

*Secure:* By leveraging our identity and access management capabilities consumers can self- register their identity, be verified and credentialed and manage their profile in order to have the best customer experience possible. This solution also supports identity proofing and scoring in order to conduct fraud and cyber security detection and prevention.

## **I: Synchronoss Cloud Platforms**

Synchronoss Cloud platforms, products and solutions are designed to create a seamless customer experience for Operator subscribers from device purchase, service onboarding and ongoing content management and engagement.

Our Synchronoss Personal Cloud™ platform is designed to deliver a competitive, high-value service and revenue stream through an operator-branded experience for subscribers to backup, restore, synchronize and share their personal content across smartphones, tablets, computers and other connected devices from anywhere at any time. The Synchronoss Personal Cloud™ service is bundled and/or sold to individual or groups of consumers (e.g. a family) for a monthly recurring charge (MRC). Our Synchronoss Personal Cloud™ platform gives an Operator better control of the user experience across all aspects of setting up and using a connected device. Our Synchronoss Personal Cloud™ platform is specifically designed to support smartphones, tablets and wirelessly enabled consumer electronics such as wearables for health and wellness, cameras, tablets, e-readers, personal navigation devices, and GPS enabled devices, as well as connected automobiles. Our Synchronoss Personal Cloud™ solution features products that facilitate the transfer of mobile content from one smart device to another and the sync, backup, storage, content management and content engagement features for mobile content.

Our Synchronoss Personal Cloud™ platform is linked to a family of clients designed to enable a persistent relationship between a subscriber and their content across devices and time. Our platform supports clients and data backup across major operating systems including: iPhone operating system ("iOS"), Android, Windows and works with mobile smart devices, tablets and PCs. Our platform and clients also support the backup, sync, upload and download of data classes including photos, videos, music, messages, documents, contacts and call logs. Our clients may also feature interactive features intended to stimulate daily use of the product such as smart tagging, image and facial recognition, flashbacks, smart stories, smart push notifications, advanced sharing capabilities, smart album creation with more being added over time. Our Synchronoss Personal Cloud™ platform and clients may also integrate with select third-party providers to co-opt features that drive third-party application and service engagement which is designed to provide future monetization opportunities to third parties and carriers. Synchronoss Personal Cloud™ is offered as different tiers of offers according to each Operator's service strategy:

- Freemium Cloud: Free Cloud Storage Tier Regardless of Service Plan, or lead with Free Trial then upsell to premium paid storage tiers
- Bundled Cloud: Value Add Services (i.e., Phone Insurance, Content Services), Include Cloud Storage as Part of Certain Service Plans. These bundles range from Hero Device, Security, Rate Plan and Low Storage Device Bundles
- Premium Cloud: Offer Cloud Storage as a Standalone Product that can be Purchased as an Individual Service for a MRC enabling new revenue streams and opportunities to mine valuable data that will give subscribers accesses to new, beneficial services.



### ***Mobile Content Transfer***

Our Synchronoss Mobile Content Transfer™ solution is an easy to use product whose client enables a secure, peer-to-peer, wireless transfer of content from one mobile smart device to another in a carrier retail location or at home/work, etc. Our solution supports secure mobile content transfer across major operating systems including iOS, Android and Windows. Our Synchronoss Mobile Content Transfer™ solution can transfer select data classes that may include photos, videos, music, messages, documents, contacts and call logs, across operating systems with varying degrees of support in accordance with the openness of the platform.

### ***Backup & Transfer***

Our Synchronoss Backup & Transfer™ solution is a variation of Synchronoss Mobile Content Transfer™ that offers the same peer-to-peer transfer of select data classes across smart mobile devices and major operating systems and also offers the ability to send supported data classes that may include photos, videos, music, messages, documents, contacts and call logs up to the cloud for temporary storage and then restore the content back into the new device or to a new device with the same client. This capability supports care channel use cases of securing content during a device wipe and also creates a value-added solution in the case of lost devices, cracked screens and other edge use cases. Furthermore, our Synchronoss Backup & Transfer™ solution gives the subscriber the capability to establish a cloud account at the point of transfer and an auto sync capability to keep content backed up to the cloud account going forward. This unified experience is designed to drive cloud enrollment at the point of transfer (often during a new line or upgrade) and provide an opportunity to get content into the Cloud to reduce the time of transfer for the next upgrade.

### ***Out of Box Experience (“OOBE”)***

Synchronoss OOBE is an integrated solution to allow Operators to integrate a first-use, branded set up experience on Android devices from retail and online purchases. Operators integrated this application into Android devices to allow for an easier to use experience for a streamlined device set up, promote value-added service applications for download and introduce the ability to store content in the Cloud - allowing an easier onboarding experience at the next device purchase and/or upgrade.

## **II: Synchronoss Messaging Platforms**

Synchronoss Messaging platforms, products and solutions enable cross channel, secure communications across connected devices.

### ***Advanced Messaging***

Our Advanced Messaging platform supports advanced messaging in both RCS and Real-Time Communication (“RTC”) and enables rich, P2P communications and creates new commerce and revenue opportunities across channels via A2P experiences for Operators and other brands. Our messaging platform operates in tandem with Messaging-as-a-Platform (“MaaP”) technologies as well as dedicated, third-party clients and native OEM clients.

- *P2P Advanced Messaging Client:* Advanced Messaging supports an advanced P2P client based on RCS and RTC technologies with compelling data (chat), voice, group and video communication features. Our RCS/RTC client creates new means of conversation providing richer communications, viral distribution via subscribers and provides new gateways for commerce that Short Message Service (“SMS”) cannot provide.
- *A2P Messaging Commerce:* Our A2P solutions are an end-to-end set of capabilities to help Operators, TMT companies and third-party brands establish an AI-driven dialogue with subscribers and consumers. The Advanced Messaging platform aggregates chat bot engines, software development kits (“SDK’s”) and API’s exposing these tools to third-party brands. This functions as an onboarding environment for chat bots, merchandising and advertising to function within a messaging environment. The platform collects user engagement data and through analytics powered dashboards, optimizing bot performance via campaign monitoring that ties into downstream third-party customer relationship management (“CRM”) operations.
- *Messaging Marketplace:* Our MMP is designed to help Operators effectively interface with A2P Providers in a dynamic and automated digital environment. The MMP platform automates and orchestrates the on-boarding of third-party brands and services who participate in an Operator’s A2P business. MMP provides easy to use tools to register a new A2P provider within an Operator’s marketplace, integrating with Operator systems (commerce, billing), business terms of use, revenue sharing, etc. MMP provides a dynamic, comprehensive dashboard to give A2P providers real-time visibility to audience engagement, commerce transactions and other transaction-based dynamics. MMP allows for A2P providers to upload new

experiences, new offers, manage dialogue with subscribers through chat bots, etc. through an easy-to-use no-code cloud native environment.

### ***E-Mail***

Our Email suite provides service providers with a secure, white-label, back-end framework for a branded email service that's reliable, consistent, and safe while also providing the opportunity to introduce and promote services that can be monetized. Service provider branded messaging is an essential solution for building stronger customer relationships while opening potential new revenue opportunities. It delivers increased subscriber "stickiness," resulting in higher trust, lower churn and increased brand reputation through higher-quality service. It also provides more cross-sell and upsell opportunities through seamless integration of advertising, real-time communications, social media, and other value-added services and applications. Our world-class email service has customers across the global market in North America, EMEA and APAC region.

Our carrier grade Email suite offers feature-rich, reliable, and secure messaging - on any device - through integrated email, chat, voice, video, personal cloud computing, unlimited storage, security, encryption, and anti-abuse capabilities. This messaging synergy delivers 50% to 70% savings on traditional siloed and hardware based storage solutions while enabling universal access via desktop, smartphones and connected devices to rich seamless integrated experience providing simpler sharing of content, greater privacy and security, enhanced trust around monetization and commerce transactions, and a fast responsive user experience supporting larger mailboxes and unlimited storage.

Our carrier branded Email solution offers leading anti-virus & anti-spam and malware technology to keep the integrity and security of the customer experience and protection of subscriber data to carrier standards. Our Email solution is an important repository for critical communications with an intuitive and feature-rich mobile and desktop email experience ensuring stickiness and increasing customer lifetime value.

## **III: Synchronoss Digital Platforms**

### ***Digital Experience Platform***

Our Digital Experience platform allows IT professionals, business owners and business analysts to author and manage digital customer experiences in a cloud-native, low/no-code environment. The platform sits between customer-facing touch points and a customer's existing back office systems orchestrating data, work flows and processes into digital customer journeys that interface with end user channels creating user experiences that can be centrally managed and coordinated with less resources than is typical in a traditional IT environment.

### ***Journey Creator***

Journey Creator is a purpose-built, easy to use cloud-native toolset that allows IT managers and business owners to collaborate on creating and managing end user experiences across all customer-facing channels. Journey Creator is middleware that sits in between back office systems and customer-facing touch points - integrating orchestrating critical data and functionality into existing channel UI/UX. Journey Creator operates in an any-to-any environment - integrating with any system and any channel UI.

**Integration:** Graphical user interface ("GUI") is fully integrated into Journey Creator for creating endpoints and drag-and drop data mapping. Journey Creator supports complex transformations and mappings via GUI.

**UI Flexibility & Control:** Journey Creator's dynamic API and libraries enable any channel client to have a rich and dynamic UI that is run by the channel. It is currently optimized for JavaScript clients.

**Business Logic:** Drag and Drop Interface for even complex logic with option to use Groovy script if highly computationally complex rules are required.

**Omni-channel:** DXP is an API-first platform where the state is not held in the client even when the client is a single-page application ("SPA"). A core journey is defined and channel-specific variants can be configured on top of the core journey to simple re-use.

**"Pause and Resume Experiences:"** Journey Creator centrally manages different channel UI's and integrates the journeys to back end systems. Because Journey Creator is a common command and control layer, it can carry the state

of one channel to the state of another channel, essentially allowing a “pause and resume” effect from one customer touch point to another. This creates a consistent, friction free customer experience that recognizes the user appropriately as they move from one channel experience to the next.

Dev Ops: Journeys are digital content and able to be deployed and rolled back like web content. The engine that runs the journey remains unchanged between releases.

Resource Optimization: Journey Creator is designed to lower cost and decrease time to market while increasing the complexity and effectiveness of omni-channel customer experiences. Journey Creator serves as a central, standardized development environment with an efficient and easy to use, low/no-code object-oriented interface that literally links systems and end-user UIs together. Because it’s centralized and non-developer friendly, a smaller, central team is capable of building and managing complex interfaces with a fraction of the resources and time necessary to manage less sophisticated experience in standard environments.

### ***Customer Experience (“CX”) IQ***

CXIQ uses analytics, artificial intelligence and completely new methods of gathering actionable insights to produce insights to help our customers improve their channel experiences. CXIQ integrates into Journey Creator to allow for real-time feedback to newly created journeys, allowing experience authors and managers to make real time changes necessary to improve the quality and effect of the journey.

### ***Journey Advisor***

Journey Advisor uses programmed analytics to make intelligent recommendations to customer facing reps and agents. Journey Advisor drives the UI and business rules of a digital sales device (tablet, smart phone, etc.). The analytics that inform the business rules and work flow are derived from customers’ existing systems and guided by the Synchronoss Insights Platform (“SIP”) dynamically insert recommended “next best actions” for a rep based on filters set by a CRM system, customer profile, business rules, etc. Journey Advisor accelerates rep competency from a new hire to a new campaign/offer. This not only assists the rep’s alignment with forecasted key performance indicators (“KPIs”), it helps model complex decisions and ultimately solves customer problems in less time.

### ***Digital Coach***

Digital Coach is a tool within DXP that serves as an intelligent dashboard or portal for customer facing reps to assess their performance against their goals and against peers. The SIP creates intelligent work flows around individual and group KPIs and uses “gamification.”

### ***Digital Activation Platform***

Our Activation technology is a scalable and flexible platform that decouples the order processing customer experience from varied and legacy IT back office order management systems. This enables sale, delivery, and assurance of new “Complex Product” bundles quickly and cheaply, creates a uniform product portfolio and pricing schema across all Sales Channels and reduces cost while improving the customer experience by reducing error rates and throughput time in processing orders, alarms, etc. The platform is fully scalable, agile and adaptable to future products, services and channel changes; it serves as a future-proof activation platform with end-to-end channel visibility and analytics and features a flexible commercial model or product sale with professional services.

### ***Digital Diversified Solutions Suite (Analytics and Financial Optimization of Networks)***

The Synchronoss Spatial Suite provides an accurate, scalable solution for optimizing every phase of the network asset lifecycle including planning, sales, marketing and customer service. In addition to handling large volumes of customer transactions quickly and efficiently, our platforms are designed to recognize, isolate and address transactions when there is insufficient information or other erroneous process elements. This knowledge enables us to adapt our solutions to automate a higher percentage of transactions over time, further improving the value of our solutions to our customers. Our platforms also offer a centralized reporting platform that provides intelligent, real-time analytics around the entire workflow related to any transaction. This reporting allows our customers to appropriately identify buying behaviors and trends, define their subscriber segments and pin-point areas where their business is changing or could be improved. These analytics enable our customers to upsell new and additional products and services in a targeted fashion that help increase their consumption of our product offerings. The automation and ease of integration of our

platforms are designed to enable our customers to lower the cost of new subscriber acquisitions, enhance the accuracy and reliability of customer transactions thereby reducing the inbound service call volumes, and responding rapidly to competitive market conditions to create new revenue streams.

### ***Synchronoss Insights Platform (“SIP”)***

Synchronoss Insights Platform is an analytics platform delivered as a SaaS solution via a public cloud infrastructure. SIP is designed to ingest raw data and generate and deliver insights through application of pre-coded and ad hoc analyses and Advanced Analytical modules. It supports features to understand key performance indicators, perform iterative investigation and answer business questions using data patterns. Based on the target use case, SIP is configured to deliver value by loading, organizing, validating, and analyzing complex data to obtain and deliver actionable insights.

SIP’s analytical services provide our solutions with a wide variety of techniques to address customers’ business challenges:

- **Descriptive Analytics:** SIP provides comprehensive ability to review historical metrics and trendlines using time series analysis and KPI monitoring services.
- **Alert Management:** SIP supports the ability to define and create alerts on any metric using a configurable rule builder. These alert rules can be threshold based, historical average based or learning models based. SIP also supports the distribution of these alerts via email, SMS, as well as published in the SIP web portal.
- **Predictive Analytics:** SIP offers a comprehensive machine learning pipeline flow to process, train, build and select analytic models and deploy them to support specific use cases.

In addition to predictive analytics, other examples of advanced analytics use cases include device benchmarking, failure prediction, preventive maintenance, anomaly detection and forecasting.

Our analytics platform also provides state of the art data visualization. Using optimized storage of data sets in a variety of repositories that include index store, in-memory store and data lake, SIP’s visualization layer supports iterative, ad-hoc visual analysis that is fully interactive.

SIP’s analytical visualization module offers the following features:

- **Analyze:** Tabular, pivot and chart-based analysis in pre-defined or ad hoc execution. Ability for the user to create analysis and share through email, an export or within the portal. Several chart types are supported out-of-the-box including column, bar, pie, donut, area, line, dual axis, scatter, and bubble, etc.
- **Observe:** This module offers interactive dashboards that supports KPIs, scorecards and analysis. Users can consume these dashboards in ad hoc fashion or create dashboards themselves by adding any existing analysis into the canvas.
- **Alert:** This module support alert visualization, rules configuration, trend analysis and distribution.

### ***Synchronoss IoT Platforms***

Our IoT solutions create an easy to administer, cloud-based dashboard enabling a single source visibility and control to disparate devices, sensors and data pools. Our platforms harvest data from disparate back office, data lakes, devices and systems to build new use cases, automated workflows, activations and more to better manage the performance of IoT ecosystems. Our Digital Experience Platform allows IoT administrators to create and manage administrative experiences and M2M use cases and transactions. Our Cloud Platform provides sync and data transfer between disparate devices and data pools using partitioned storage and Artificial Intelligence (“AI”) to guide intelligent sync of data as a device or service needs it. Our Advanced Messaging Platform provides IoT administrators with the ability to enhance workflows with automated or semi-automated chatbots guided by AI to create more proficient transactions, visibility and next best actions.

### ***Synchronoss Smart Buildings***

Our Smart Buildings solution is a cloud-based SaaS and advanced analytics offering that integrates with BMS and sensors to synthesize data and deliver single-pane-of-glass visibility into all control systems (HVAC, lighting, refrigeration, etc.), their health, energy consumption and costs. Sophisticated machine learning algorithms generate optimal configurations to reduce overall energy consumption and costs, reduce maintenance and lengthen control systems’ lifespan. Within the portal, users have access to visualizations, dashboards, canned and ad hoc analysis, monitoring and tracking and notifications and alerts. Advanced Analytics packages including equipment optimization, predictive maintenance, failure prediction and anomaly detection.

By utilizing Synchronoss Smart Buildings solution, building and facility managers are able to gain efficiency in system and building operations, as well as realize savings, such as:

- Optimized and manage equipment settings and schedules with bi-directional integration and control within the Synchronoss Smart Buildings portal
- Eliminated software license and maintenance costs associated with existing control point software
- Reduced maintenance and operating costs by quickly integrating multiple sites and buildings across the globe into one portal by leveraging a virtualized cloud delivery model
- Easy visibility across various stakeholders with access and capabilities configured at the user level (executive dashboards, technician features, KPI reports, etc.)
- Increased energy efficiency with energy consumption analysis, energy trending and benchmarking, and identification of energy waste with recommendations for improvement
- Equipment optimization with predictive maintenance, equipment failure prediction to prevent catastrophic damage and breakage, and reduced expense of manual inspections and monitoring

Our technician application enables quick and pain-free sensor and gateway installation and activation with automatic integration with the Smart Buildings via the cloud.

Synchronoss Smart Buildings dashboards and visualizations offer a set of dashboards containing insights, trends and other meaningful metrics from each building system and integrated sensors (HVAC, Computer Room Air Conditioner, Air Handling Unit, Chiller, temperature and humidity sensors, etc.). Within the Smart Buildings portal, end-users are also able to:

- Observe metric values in real time and near-real time
- Go deeper into information being displayed using easy drill downs and filters
- Ability to quickly create new dashboards on the fly

Our Smart Buildings solution's monitoring and tracking capability allows the user to track KPI's and know ahead of time if business objectives and goals are on target, for example, the ability to track actual energy consumption compared to an annual forecast.

Users can schedule and run weekly, monthly or quarterly diagnostic health checks of all systems to compare actual functionality against system expectations given equipment age and environmental conditions. Smart Buildings can also produce energy usage reports for month over month and year over year energy consumption analysis.

Alerts can be configured using threshold based, heuristic, or machine learning rules and can be set to notify users within the portal, through Email, SMS or a combination. Other alert capabilities include the ability to:

- Customize escalations for alerts based on type and severity
- Schedule alert windows (snoozing, only portal during non-business hours, etc.)
- Acknowledge alerts remotely within Email or directly in the portal

Our Smart Buildings solution offers the ability to customize user access by hiding dashboards, metrics, data and limiting capabilities to meet business security needs and improve experience of users. Key users include:

Chief Financial Officers ("CFO"): Synchronoss Smart Buildings Platform is useful for CFO's to gain complete visibility of total building costs, insights to reduce costs and optimize ROI and easy creation and access to automated, data-rich reports.

Facility Managers: Synchronoss Smart Buildings Platform gives Facility Managers full visibility to facility information such as total power consumption, building alarms, building settings and can generate customized reports to be shared with Finance and other departments.

Facility Engineers: Synchronoss Smart Buildings Platform gives Facility Engineers visibility into various problem points across the facility including alarms, etc. and provides recommendations for next best actions and the ability to update status for ongoing projects and developing situations.

## **Demand Drivers for Our Business**

In today's business landscape, 'Digital Transformation' is not new or novel anymore; it is a necessary way of doing business in a landscape where access to technology has become democratized and the effects of citizen developers can change entire industries overnight. Synchronoss is positioned to help global leaders stay ahead of ever-changing business dynamics in the TMT and IoT markets. The demand drivers for our business address the needs of enterprise to make effective use of emerging technology to grow their business in new ways, at new speeds and a new cost structure beyond previous business-as-usual ("BAU") paradigms.

These needs underpin our platform, product and solution strategies to provide forward looking solutions to TMT and IoT providers to respond to new, high stakes business challenges. TMT providers need to digitally transform to increase and find new sources of revenue, reduce operational cost and complexity and improve the appeal of their products and services to better compete with new standards set by over-the-top (“OTT”) competitors.

### **Overall Trends in the TMT Market**

- Convergence: TMT companies are moving into different spaces (Entertainment, Content, etc.) to pursue new growth.
- Digital Transformation: Customer experience is the key to revenue growth. From Amazon to Alibaba, companies look to digital technology to enhance experiences and cut cost at the same time.
- Regulation: Public distrust in Big Tech is increasing global oversight and government policies to enforce data privacy and identity protection.
- Disintermediation: Opportunity to provide growth-oriented, value-add services has shifted to OTT models.

### **Low Code**

- Just as Content Management Systems (“CMS”) forever changed web development, low code technology is changing the building and management of digital experiences. Low Code technology simplifies the creation and management of complex customers experiences with simple, easy to use, “drag and drop” interfaces that replace manual code and script writing. This enables more to be done with fewer resources and opens up customer experience creation and management to non-technical or “citizen” developers.

### **Messaging as an operating system**

- Starting with the advent of the Chinese OTT app, WeChat, messaging has evolved from email, to text, to chat, to a fully immersive interactive environment where consumers can interface with brands as easily as they do with each other. This has created a huge spike in developers for chat bots and other mini programs that exist within messaging apps. This trend has spread to Japan (Line) and the rest of the world (Facebook, WhatsApp, Snapchat). This all immersive messaging is consuming screen time at such a rate that each large messaging platform has the potential to become its own operating system.

### **Propagation of 5G Network**

- Perhaps the biggest growth driver of the next five years will be the advent of the 5G Network and the epoch change in business that comes with it. 5G tops out at 10 gigabits per second (“Gbps”). That means 5G is a hundred times faster than the current 4G technology-at its theoretical maximum speed. Perhaps the real value in 5G isn’t the speed but the low latency. The 5G Network was designed around enabling use cases in the IoT marketplace and this network will set the IoT market on its way. Smart Cities are expected to be a major driver and customer of the 5G networks. The amount of data traffic will likely grow faster than the number of connections because of the increase of deployment of video applications on M2M connections and the increased use of applications, such as telemedicine and smart car navigation systems, which require greater bandwidth and lower latency. Moreover, more people are moving into urban environments where IoT and Smart Cities are growing. By 2050, there is expected to be 7.5 billion people living in urban environments, equivalent to the entire world population today. Simply put, cities will be forced to get more efficient causing a greater need for IoT device, ecosystem, network and administrative solutions.

### **Growth Strategy**

Our growth strategy is to establish our platforms as introduce disruptive technology to the TMT and IoT customers and pursue a leadership agenda in strategically select vertical segments of the digital transformation, cloud, advanced messaging and IoT solutions markets. We expect to scale our growth across our platforms and pursue logical extensions of new products and solutions into new markets as it makes sense. We plan to continue to focus our technology and development efforts around helping our customers create new revenue, optimize their cost and operations and innovate the experience of their end customer touch points.

Synchronoss’ technologies and business model create a mutual incentive relationship with our Enterprise customers. With the help of our products, platforms and solutions, we help our customers grow in revenue, margin, subscribers, etc. This growth fuels Synchronoss revenue and opens up new vertical opportunities to help our customers expand their growth with additional platforms and solution. The tenants of our growth strategy are:

- **Driving revenue and margin growth:** Our platforms create new premium services for subscription, new monetization of existing channels and new experiences that overperform in sales and other revenue KPIs at lower costs and higher margins.
- **Creating new revenue streams:** Our platforms and solutions help create entirely new revenue streams from existing or new channels and new forms of monetization that were not previously possible, driving recurring SaaS revenue growth.
- **Maximizing value for channel partners:** Our platforms and solutions provide complementary and revenue enhancing technology and new distribution opportunities for channel partners in TMT and IoT markets creating high volume, low cost growth.
- **Maximizing and expanding our customer base:** Our platforms and technologies provide multiple avenues to new growth for our existing customers and partners and give us entry into new customers in the TMT and IoT markets.

By expanding our product and market focus for white label services and back office solutions for Operators, MSOs and OEMs to Digital, IoT and Advanced Messaging solutions for the broader TMT market, we have increased the breadth and depth of opportunities for our technologies and significantly grown our potential customers base. With that comes an increased variety of potential Customer engagements in focused verticals markets, shortened sales cycles and higher overall visibility in the TMT/IoT marketplaces.

### ***Growing Our Global Reach***

We have invested significantly in our sales, marketing and operations to expand our historically North American presence and revenue weighting to a global presence especially in the EMEA and APAC markets. Similarly, with our digital platform, we are addressing the issues facing many large, global companies who struggle to create proficient and less costly service distribution across dozens of different countries and regions. This allows us to efficiently sell once and deploy many times inside extremely large companies while delivering impactful global solutions in record time.

### ***Scaling our Partnerships***

In 2019 we built a strong partner network around technology companies that have complimentary solutions, ready channels and a strategic overlap in their customers and prospects. This focus extends the scope of our functionality and appeal to new customers with partner technologies, greatly increase the reach of our sales and marketing - increasing the scale and sales velocity of our platforms, products and solutions at a fraction of the cost.

### ***Transition from Licensing to Recurring***

Healthy growth for Synchronoss is expected to be realized by the deliberate and systematic shift from perpetual license-based revenue to SaaS recurring revenue models. From a customer standpoint, this will allow us to focus and better serve high value relationships characterized by mutual commitment, collaboration on achieving customer KPIs from each deployment, shared success in transactions and other models. Building our growth model around recurring revenue enables increased predictability, stability and reliability of revenue, predictable cash flow, lower risk, and higher value focus in sales and marketing. Additionally, recurring revenue models help with managing expense and investment relative to the success of platform engagements.

## **Sales, Partnerships and Marketing**

### ***Sales***

We sell our platforms, products and services through a direct sales force, our strategic partnerships and, collaboration with our customers to re-sell services to their end customers and subscribers. To date, we have concentrated our sales efforts on a range of select verticals of the TMT and IoT markets including telecommunications companies (CSPs, MSOs) OEMs, technology providers, media companies, government and multi-channel retailers both domestically and internationally. Typically, our sales process involves an initial consultative process that allows our customers to better assess the operating and capital expenditure benefits associated with an optimal activation, provisioning, and cloud-based content management architecture. Our sales teams are well trained in our platforms, products and services and well versed in market trends, demands and conditions that our current and potential customers are facing. This enables them to identify and qualify opportunities that are appropriate for our platforms deployments to benefit these customers. Following each sale, we assign account managers to provide ongoing support and to identify additional sales opportunities. We generate leads from contacts made through trade shows, seminars, conferences, events,

analyst relationships, social media, market research, our Web site, customers, strategic partners and our ongoing public relations programs.

### **Partnerships**

We have a dedicated partner outreach organization that functions in tandem with business development within Synchronoss. The Synchronoss Partnership program has three dedicated vectors of focus:

*Go To Market/Channels:* We are pursuing partnerships with technology companies who supply customers with solutions that complement the Synchronoss product and go to market strategy. These partnerships provide access to Synchronoss platforms, products and solutions create channels of distribution supported through the Synchronoss Channel Enablement Program. This portfolio of partners provide access to new sales funnels and scale to Synchronoss offerings.

*Technology Augmentation:* We are pursuing partnerships with technology companies with complementary IP in platforms, products and solutions. Synchronoss is pursuing partnerships with a two-way value-add in technologies that supply strategic functionality to our mutual customers. These partnerships can provide ready-made technologies that allow our platforms, products and solutions to participate in new markets without the investment in new technology.

*System Integrators:* We are pursuing partnerships with system integrators (“SI”) and consulting firms in order to expose our platforms, products and solutions to a wider range of customers and supply our SI partners with ready-made IP to fulfill on their custom solutions. These partnerships can provide SI’s with turnkey technologies to fulfill vertical lines of solutions in the TMT and IoT space and will formulate the basis of a formal Synchronoss Channel Enablement Program featuring toolkits, documentation, a dedicated extranet and other channel support.

*Maintain Technology Leadership:* We strive to continue to build upon our technology leadership by continuing to invest in research and development to increase the automation of processes and workflows and develop complementary product modules that leverage our platforms and competitive strengths, thus driving increased interest by making it more economical for customers to use us as a third-party solutions provider. In addition, we believe our close relationships with our Tier 1 customers can continue to provide us with valuable insights into the dynamics that are creating demand for next-generation solutions.

*Leverage and Enforce our Intellectual Property:* We have a significant repository of granted and filed patents and trademarks, and we expect to use this as a differentiator of our products and services in the marketplace.

### **Marketing**

We focus our marketing efforts on increasing our direct sales pipeline, increasing adoption and revenue yield in our customers’ channels and selectively increasing the visibility of Synchronoss and its technologies within our target markets, investors, analysts and the technology trade press. We do this through the following practices and points of emphasis:

#### **Growth Marketing**

Our Growth Marketing team is the most cost-effective, influential and direct path to increased revenue for our Operator customers (and by revenue share, Synchronoss). Our Growth Marketing team collaborates with Operator product owners and channel marketers to create product and marketing strategies and campaigns; increasing subscriber awareness and adoption to our white-label Personal Cloud and Advanced Messaging products. We devise strategies based on bundles, channel mixes against targeted audience segments based on standing Operator adoption KPI’s for like services. Together we create business and pricing models that are designed to create an order of magnitude increase in revenue yield for the Operator. This shared incentive gives the Operator incentive to collaborate on new growth-oriented marketing strategies with full visibility to real time results allowing us to adjust channel mix, pricing and other variables real time to achieve higher quarter over quarter revenue growth results.

#### **Account Based Marketing (“ABM”)**

Our product marketing team works closely with our sales organizations to create custom offers that are digitally promoted to highly targeted prospects and account contacts in targeted verticals via email, text and social media. The campaigns use hand-selected third-party marketing technology platforms that locate new prospects and manage communications and response via automated functionality designed to maximize the ability of our direct sales force to manage multi-layered communications to hundreds of contacts within targeted verticals. Our campaigns are optimized to appeal to carefully scored and weighted ideal customer profiles (“ICP”) that define the organizations and individuals in that organization best pre-disposed to favorably receive our offer. Our campaigns and content are provided as tools for our direct sales force to interact efficiently with prospects and transition them into our existing



pipeline management tools and practices. Each campaign is carefully monitored for increasing effectiveness of engagement and response key performance indicators and provide guidance for the ongoing optimization and refinement of sales driven communications and marketing content. Our ABM tech stack, playbook and sales aides are foundational and can be employed across any of our current and future sales and business development pipelines.

### **Public Relations**

We generate visibility with joint customer and partner releases and announcements, the soliciting of earned media from prominent industry publishers, the release of thought leadership content and other owned media of interest to our target markets. Our team is active in preeminent technology and industry forums such as Cellular Telecommunications Industry Association (“CTIA”) and the Global System for Mobile Communications (“GSMA”). We participate regularly and invest heavily in our presence at major events, exhibiting and hosting strategic meetings, conducting product demonstrations, speak at keynotes, panels and other forums including the Consumer Electronics Show (“CES”), Mobile World Congress (“MWC”) in Europe, Asia and The United States, and are constantly evaluating our ability to participate in new events, forums and technology communities.

### **Product Marketing**

Our marketing team creates sales materials including presentations, downloadable documents and various multimedia to support our direct sales model.

### **Social Media Marketing**

Our team distributes updates, tweets and posts across a variety of social media on a company and select Synchronoss leaders.

### **Digital Marketing**

Our team maintains our corporate web site and creates digital content to be used in ABM and other means of digital outreach. Additionally, we create targeted Search Engine Optimization (“SEO”) profiles for each product and monitor discovery and engagement KPIs, automated responses, campaign landing pages and inbound direct contact forms.

### **Partnership Marketing**

Our team works closely with marketing resources from our strategic partners to create content, participate in joint campaigns, speaking engagements and use of marketing development funds.

## **Competition**

Competition across our markets is incredibly diverse, dynamic and nuanced in an increasingly interconnected landscape of rapidly changing technologies, evolving industry standards, new product introductions and converging spaces and services.

The following categories of competitors feature prominently as viable alternatives to the different platforms we offer in the TMT and IoT markets. Our competitors spend significant resources on developing and marketing products and services - far more than Synchronoss is able to spend. To compete against global platform providers, we are compelled to maximize our natural advantages through the relationships we have with our customers and partners and the unique value we offer them: bottom line increase in revenue and margins.

### **Cloud Competitors**

- OTT Service & Platform Providers - Apple, Google, Dropbox, Box, Microsoft and Amazon all provide personal cloud services closely integrated to their respective technology or service platforms. Each cloud competitor pursues a similar formula towards different economic ends. In almost every case, the level of paid subscriber adoption is relatively low (less than 25%).
  - Apple (iCloud) uses cloud to create continuity in the device experience and creates an incentive for Apple customers to remain on iPhones.
  - Google (Google Photos) uses cloud to create engagement opportunities with personal content and harvests meta-data to create new monetization opportunities within its global network.
  - Drop Box is largely platform independent and does pursue premium revenue. However, they mostly focus on super users who use the cloud for business and pay a much higher average revenue per user (“ARPU”) than any other cloud provider.
  - Microsoft (One Drive) uses cloud to help drive the adoption of Office Online across a variety of platforms and devices
  - Amazon (Photos) bundles its cloud into a prime membership and focuses on integration with Alexa

This formula of using cloud to reinforce an existing, dominant revenue stream creates a significant competitive opening for Synchronoss: OTT cloud service providers do not target Operators as their distribution channel and solicit customers at large leveraging captured audiences from their existing sales channels and service bundles. By offering a premium only model, we are able to create value for the lives of Operator subscribers that reinforce existing operator revenue strategies and give the Operator incentive to grow and maintain its paying base. This creates a distinct competitive advantage for Synchronoss to create an effective new revenue channel that offers clear value in daily use to millions of existing subscribers.

- White Label Platform Providers - The field of platform-independent, white label personal cloud providers has consolidated in recent years with Funambol, One Drive and others competing for Operator distribution deals. However, these providers generally target second and third tier regional operators with low-risk, revenue share business models and do not generally pose a real threat to Tier 1 world-wide Operators.

### **Competitive Advantages for Synchronoss Cloud Platforms**

Verizon Wireless' illustrated these market dynamics in the creation of a multi-hundred-million-dollar revenue stream using a premium instantiation of Synchronoss' personal cloud. The success of this premium-only offer validates that cloud trends are equally applicable to Operator subscribers as OTT subscribers. Synchronoss continues to provide the world's largest white label cloud solution for Operators in which they can generate new services revenue (currently on a flat-to-declining trajectory globally) but can extend a branded relationship to an essential service, capture valuable data to provide better experiences and offer a level of security that has not been demonstrated by OTT competitors. As Verizon continues to over-achieve on its business KPIs, it illustrates a proven model for Operators world-wide to capitalize on service growth.

### **Messaging Competitors:**

The emerging RCS marketplace is intensely competitive across the globe. Leading OTT device and OS platform providers, led by Google, Samsung along with prominent online platform providers such as Facebook, WhatsApp, Instagram, WeChat and LINE have created a radically new market for communication and monetization that is turning "messaging" into a new, virtual OS. By inventing new, innovative and immersive messaging experiences in China (WeChat) and Japan (LINE), global platform leaders and social networking giants have moved messaging initiatives to the forefront of their global strategies and platform innovation plans.

### **Competitive Advantages for Synchronoss Messaging Platforms**

Due to our IP in advanced mobile messaging and strong Operator track record and heritage, Synchronoss is well-positioned to take part in the ground floor of the new messaging revenue growth. Synchronoss extended its Operator email contracts in Japan to arm them in their transition to an RCS messaging paradigm. We were selected to provide our RCS/RTC technology and platforms to the first Operator messaging cooperative in Japan, powering their Plus Message offering. Our white label Advanced Messaging Platform offers a comprehensive solution for Operators to take advantage of the onset of RCS messaging:

- Operator Neutrality - Synchronoss has historically managed discrete confidential contracts between competitive Operators world-wide. This puts us in a unique position to play the role of "Switzerland" to Operators who are seeking to band together and create national messaging services to offset their collective loss to OTT Messaging Providers.
- P2P Messaging: Synchronoss' Advanced Messaging platform works with various Messaging as a Platform (MaaP) configurations across Operators and OEMs, providing key messaging management services for RCS capable handsets and clients.
- A2P Commerce: Our Advanced Messaging platform supports native RCS, SMS and Client-driven RCS solutions providing maximum range across devices and operating systems, giving Operators maximum scale for commerce engagement.
- Brand Ecosystem Management: Our Advanced Messaging platform provides an easy-to-use management portal for brands and Operators to connect commerce to subscribers.

- Operator-Grade Scale and Security: Our track record with massive, secure Operator installations, meeting highly regulated SLA requirements put Synchronoss in a position to look after the interests of each individual Operator as well as collectives.

### **Digital Competitors**

- System Integrators - Accenture, Amdocs and others engage our customers in long term contracts for services focused on digital transformation.
- CRM and BPM Providers - Major providers of CRM and other systems of record such as Salesforce, Pega Systems and Vlocity are engaging with our customers in engagements that emulate our Digital Experience Platform.
- Internal IT- Our customers and IT developers and system administrators are engaged in products to upgrade existing systems that would conflict with our Digital Experience and IoT platforms.

### **Competitive Advantages for Synchronoss Digital Platforms**

The impact of “FAANG” (Facebook, Apple, Amazon, Netflix and Google) on the market is easy to see by virtue of the market share, revenue and cultural impact attained by like companies. As companies in the TMT space look to reclaim lost market share, revenue and seek to trim costs to compensate, they must find ways to deliver compelling, Omni-channel customer experiences.

Synchronoss has invested significantly in revitalizing its digital platform to assist TMT companies in not only catching up but actively competing for the revenue, market share and cultural impact they have lost to FAANG companies.

- Omni-Channel Innovation - Synchronoss DXP creates an environment where companies can centrally create and manage Omni-channel experiences - allowing total control of channel user experiences creating a continuous and intelligent pause and resume experience across channels.
- Simple Systems Integration - Synchronoss DXP integrates into any back-office system APIs, extracting mission-critical data and work flows into its Journey Creator environment - using this data to fuel innovative customer experiences into existing channels. This eliminates the need for companies to “rip and replace” their existing systems in order to innovate, create new revenue and reduce costs.
- Easy to Operate Tools - Synchronoss DXP is a low/no-code, object-oriented environment that centrally collects back office data and uses this data to create compelling, intelligent user experiences across various end channels. The drag-n-drop journey creation experience is a simple, intuitive way to allow IT developers to operate faster and create an environment easy enough for business analysts and channel owners to collaborate.
- Cost Efficient creation of FAANG-like Experiences - Synchronoss DXP allows existing systems to support middleware that sits between the back office and channel user experiences to create a centralized command and control center to author user experiences across touch points. This allows companies to author and manage better, more innovative and more effective customer experiences with a fraction of the manpower necessary in a BAU environment. DXP is essential to check all the boxes of digital transformation: new revenue, innovative experiences and reduced costs.

### **IoT Competitors**

IoT Platform and Solutions providers such as Honeywell, Siemens, GE are among just some of the large competitors in the IoT and Smart Buildings market. Most focus on IoT solutions for their systems and equipment but may over time begin looking at aggregation solutions to provide complete building monitoring and management.

### **Competitive Advantages for Synchronoss IoT Platforms**

Synchronoss has been closely involved in enabling Operator IoT offerings supporting the provisioning of Internet capable vehicles and wearables. Our white-label business model is accretive to Operators, allowing them to bring new IoT services to market - adding new revenue and new value to IoT Network packages.

Our Smart Buildings platform uses automation, orchestration and analytics that bring disparate building systems together - creating energy efficiencies, insights and easier points of management for administrators. This creates an easy to sell, easy to use plug and play, end-to-end solution powering IoT use cases that can be deployed quickly and operated easily.

## **Employees**

We believe that our growth and success are attributable in large part to our employees and an experienced management team, many members of which have years of industry experience in building, implementing, marketing and selling transaction management solutions critical to business operations. We intend to continue training our employees, as well as developing and promoting our culture, and believe that these efforts provide us with a sustainable competitive advantage. We offer a work environment that enables employees to make meaningful contributions, as well as incentive programs that are designed to continue to motivate, retain and reward our employees.

As of December 31, 2019, we had 1,659 full-time employees located in India, North America, Europe and Asia Pacific regions. None of our employees are covered by any collective bargaining agreements.

## **Available Information**

Our Web address is [www.synchronoss.com](http://www.synchronoss.com). On this Web site, we post the following filings after they are electronically filed with or furnished to the SEC: Form 10-K, Form 10-Q, our current reports on Form 8-K, our proxy statement on Schedule 14A related to our annual stockholders' meeting and any amendment to those reports or statements filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended. All such filings are available on the Investor Relations portion of our Web site free of charge. The contents of our web site are not intended to be incorporated by reference into this Form 10-K or in any other report or document we file.

The reports filed with the SEC by us and by our officers, directors and significant shareholders are available for review on the SEC's website at [www.sec.gov](http://www.sec.gov).

Synchronoss and Synchronoss Personal Cloud and other trademarks of Synchronoss appearing in this Form 10-K are the property of Synchronoss. Other trademarks or service marks that may appear in this Annual Report are the property of their respective holders. Solely for convenience, the trademarks and trade names in this Annual Report are referred to without the ®, ™ and SM symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.

## ITEM 1A. RISK FACTORS

*An investment in our common stock involves a high degree of risk. The following are certain risk factors that could affect our business, financial results and results of operations. You should carefully consider the following risk factors in connection with evaluating the forward-looking statements contained in this Form 10-K because these factors could cause the actual results and conditions to differ materially from those projected in forward-looking statements. The risks that we have highlighted here are not the only ones that we face. If any of the risks actually occur, our business, financial condition or results of operation could be negatively affected. In that case, the trading price of our stock could decline, and our stockholders may lose part or all of their investment.*

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

***The terms of our secured revolving credit facility require us to meet certain operating covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.***

In October 2019, we entered into a revolving credit facility with Citizens Bank, N.A. that is secured by a lien covering substantially all of our assets, other than our existing real property. The revolving credit facility contains customary covenants that limit the ability of our company and our restricted subsidiaries to, among other things, (1) incur additional indebtedness, (2) pay dividends or make certain other restricted payments, (3) sell assets, (4) make certain investments, and (5) grant liens. These covenants are subject to exceptions and qualifications set forth in the credit agreement. The financial covenants set forth in the credit agreement include a maximum consolidated total leverage ratio and a minimum consolidated fixed charge coverage ratio, each of which will be tested at the end of each fiscal quarter. If we default under the terms of the revolving credit facility or any future debt facility, the lender may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, the lender's right to repayment would be senior to the rights of the holders of our common stock. The lender could declare a default upon the occurrence of any event that they interpret as a material adverse effect as defined under the loan agreement. Any declaration by the lender of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

***Our business may not generate sufficient cash flows from operations or future borrowings from institutional creditors or from other sources which may not be available to us in amounts sufficient to enable us to fund our liquidity needs, including capital expenditure requirements.***

We cannot guarantee that we will be able to generate sufficient revenue or obtain enough capital to fund our planned capital expenditures and execute on our business strategy. We may be more vulnerable to adverse economic conditions than our leveraged competitors and thus less able to withstand competitive pressures. A reduction in our ability to generate cash available for investment or debt repayment or to make improvements or respond to events that would enhance profitability may require us to delay, scale back or eliminate some or all of our activities which could have a material adverse effect on our business, results of operations and financial condition.

***If we do not meet our revenue forecasts, we may be unable to reduce our expenses in a timely fashion to avoid or minimize harm to our results of operations.***

Our revenues are difficult to forecast and are likely to fluctuate significantly from period to period, particularly as we continue to implement our business strategy. We base our operating expense and capital investment budgets on expected sales and revenue trends, and many of our expenses, such as office and equipment leases and personnel costs, will be relatively fixed in the short term and will increase over time as we make investments in our business. Our estimates of sales trends may not correlate with actual revenues in a particular quarter or over a longer period of time. Variations in the rate and timing of conversion of our sales prospects into sales and actual revenues could cause us to plan or budget inaccurately and those variations could adversely affect our financial results. In particular, delays, reductions in amount or cancellation of customers' contracts would adversely affect the overall level and timing of our revenues, and our business, results of operations and financial condition could be harmed. Due to the relatively fixed nature of many of our expenses, we may be unable to adjust spending quickly enough to offset any unexpected revenue shortfall. In the course of our sales to customers, we may encounter difficulty collecting accounts receivable and could be exposed to risks associated with uncollectible accounts receivable. In the event we are unable to collect on our accounts receivable, it could negatively affect our cash flows, operating results and business.

***Our Series A Convertible Participating Perpetual Preferred Stock (the “Series A Preferred Stock”) contains covenants that may limit our business flexibility.***

On February 15, 2018, in accordance with the terms of that certain Securities Purchase Agreement dated as of October 17, 2017 with Silver Private Holdings I, LLC (“Silver”), an affiliate of Siris Capital Group, LLC (“Siris”), we issued to Silver 185,000 shares of our newly issued “Series A Preferred Stock”, par value \$0.0001 per share, with an initial liquidation preference of \$1,000 per share, in exchange for \$97.7 million in cash and the transfer from Silver to us of 5,994,667 shares of our common stock held by Silver. In connection with the issuance of the Series A Preferred Stock, we filed a Certificate of Designations with the State of Delaware setting forth the rights, preferences, privileges, qualifications, restrictions and limitations on the Series A Preferred Stock (the “Series A Certificate”). The holders of a majority of the Series A Preferred Stock, voting separately as a class, are entitled at each of our annual meetings of stockholders or at any special meeting called for the purpose of electing directors (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (i) to nominate and elect two members of our Board of Directors for so long as the Preferred Percentage (as defined in the Series A Certificate) is equal to or greater than 10%; and (ii) to nominate and elect one member of our Board of Directors for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%.

For so long as the holders of shares of our Series A Preferred Stock have the right to nominate at least one director, we are required to obtain the prior approval of Silver prior to taking certain actions, including:

- (i) certain dividends, repayments and redemptions;
- (ii) any amendment to our certificate of incorporation that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock;
- (iii) issuances of stock ranking senior or equivalent to shares of Series A Preferred Stock (including additional shares of Series A Preferred Stock) in the priority of payment of dividends or in the distribution of assets upon any liquidation, dissolution or winding up of us;
- (iv) changes in the size of our Board of Directors;
- (v) any amendment, alteration, modification or repeal of the charter of our Nominating and Corporate Governance Committee of the Board of Directors and related documents; and
- (vi) any change in our principal business or the entry into any line of business outside of our existing lines of businesses.

In addition, in the event that we are in EBITDA Non-Compliance (as defined in the Series A Certificate) or the undertaking of certain actions would result in Synchronoss exceeding a specified pro forma leverage ratio, then the prior approval of Silver would be required to incur indebtedness (or alter any debt document) in excess of \$10.0 million, enter or consummate any transaction where the fair market value exceeds \$5.0 million individually or \$10.0 million in the aggregate in a fiscal year or authorize or commit to capital expenditures in excess of \$25.0 million in a fiscal year.

There is no guarantee that the holders of the Series A Preferred Stock would approve any such restricted action, even where such an action would be in the best interests of our stockholders. Any failure to obtain such approval could harm our business and result in a decrease in the value of our common stock.

***Our Series A Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to, the rights of our common stockholders, which could adversely affect our liquidity and financial condition, and may result in the interests of the holders of our Series A Preferred Stock differing from those of our common stockholders.***

The holders of our Series A Preferred Stock have the right to receive a liquidation preference entitling them to be paid out of our assets available for distribution to stockholders before any payment may be made to holders of any other class or series of capital stock, an amount equal to the greater of the stated value of such holder’s shares of Series A Preferred Stock or the amount that such holder would have been entitled to receive upon our liquidation, dissolution and winding up if all outstanding shares of such series of Series A Preferred Stock had been converted into common stock immediately prior to such liquidation, dissolution or winding up, plus accrued but unpaid dividends.

In addition, dividends on the Series A Preferred Stock accrue and are cumulative at the rate of 14.5% per annum, payable quarterly in arrears in cash or in-kind. The holders of our Series A Preferred Stock also have certain redemption rights, including the right to require us to repurchase all or any portion of the Series A Preferred Stock upon the occurrence of certain events.

These dividend and redemption obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. Our obligations to the holders of Series A Preferred Stock, including the requirement that we obtain the consent of the holders of Series A Preferred

Stock prior to incurring additional indebtedness under certain circumstances, could also limit our ability to obtain additional financing or increase our borrowing costs, which could have an adverse effect on our financial condition. The preferential rights could also result in divergent interests between the holders of shares of Series A Preferred Stock and holders of our common stock. The two members of our Board of Directors elected by the Series A Preferred Stock, Frank Baker and Peter Berger, are affiliated with Silver, which holds all outstanding shares of our Series A Preferred Stock. Notwithstanding the fact that all directors are subject to fiduciary duties to us and to applicable law, the interests of the directors elected by the holders of the Series A Preferred may differ from the interests of our security holders as a whole or of our other directors.

***If we do not continue to improve our operational, financial and other internal controls and systems to manage our growth and size, our business, results of operations and financial condition could be adversely affected.***

Our historic and anticipated growth will continue to place significant demands on our management and other resources and will require us to continue to develop and improve our operational, financial and other internal controls. In particular, our growth will increase the challenges involved in:

- recruiting, training and retaining technical, finance, marketing and management personnel with the knowledge, skills and experience that our business model requires;
- maintaining high levels of customer satisfaction;
- developing and improving our internal administrative infrastructure, particularly our financial, operational, communications and other internal systems;
- preserving our culture, values and entrepreneurial environment; and
- effectively managing our personnel and operations and effectively communicating to our personnel worldwide our core values, strategies and goals.

In addition, the increasing size and scope of our operations increase the possibility that a member of our personnel will engage in unlawful or fraudulent activity, breach our contractual obligations, or otherwise expose us to unacceptable business risks, despite our efforts to train our people and maintain internal controls to prevent such instances. If we do not continue to develop and implement the right processes and tools to manage our enterprise, our business, results of operations and financial condition could be adversely affected.

***The success of our business depends on the continued growth in demand for connected devices and the continued availability of high-speed access to the Internet.***

The future success of our business depends upon the continued growth in demand for connected devices and business transactions on the Internet, and on our customers having high-speed access to the Internet, as well as the continued maintenance and development of the Internet infrastructure. While we believe the market for connected devices will continue to grow for the foreseeable future, we cannot accurately predict the extent to which demand for connected devices will increase, if at all, and the ability to attract consumers who have historically purchased wireless services and devices through traditional retail stores. If the demand for connected devices were to slow down or decline or the supply of connected devices to our customers is impacted for any reason, such as the novel coronavirus or other public health epidemics or concerns, our business and results of operations may be adversely affected. If for any reason the Internet does not remain a widespread communications medium and commercial platform, the demand for our services would be significantly reduced, which would harm our business, results of operations and financial condition.

To the extent the Internet continues to experience increased numbers of users, frequency of use or bandwidth requirements, the Internet may become congested and be unable to support the demands placed on it, and its performance or reliability may decline. Any future Internet outages or delays could adversely affect our business, results of operation and financial condition.

Our business growth would be impeded if the performance or perception of the Internet was harmed by security problems such as “viruses,” “worms” or other malicious programs, reliability issues arising from outages and damage to Internet infrastructure, delays in development or adoption of new standards and protocols to handle increased demands of Internet activity, increased costs, decreased accessibility and quality of service, or increased government regulation and taxation of Internet activity. The Internet has experienced, and is expected to continue to experience, significant user and traffic growth, which has, at times, caused user frustration with slow access and download times. If Internet activity grows faster than Internet infrastructure or if the Internet infrastructure is otherwise unable to support the demands placed on it, or if hosting capacity becomes scarce, the growth of our business and operating results may be adversely affected.

***The novel coronavirus outbreak could impact our operations.***

The ongoing coronavirus outbreak emanating from China at the beginning of 2020 has resulted in increased travel restrictions, the cancellation or rescheduling of trade shows and other events, and the extended shutdown of certain businesses. The spread of the novel coronavirus throughout the world may also create global economic uncertainty, which may cause partners, suppliers and potential customers to closely monitor their costs and reduce their spending budget. In addition, if the pandemic continues to spread, we may need to limit operations or implement limitations, including work from home policies. The extent to which the coronavirus impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the coronavirus, the ultimate geographic spread of the coronavirus, the duration of the outbreak, travel restrictions imposed, business closures or business disruption, and the actions taken throughout the world, including in our markets, to contain the coronavirus or treat its impact. As a result our supply chain, financial condition, revenues, profitability and cash flows could be adversely affected.

***Due to the global nature of our operations, political or economic changes or other factors in a specific country or region could harm our operating results and financial condition.***

We conduct significant sales and customer support operations in countries around the world. As such, our growth depends in part on our increasing sales into emerging countries. We also depend on, and many of our customers depend on, non-U.S. operations of our contract manufacturers, component suppliers and distribution partners. Emerging countries in the aggregate experienced a decline in orders during fiscal 2019 and certain prior periods. We continue to assess the sustainability of any improvements in these countries and there can be no assurance that our investments in these countries will be successful. Our future results could be materially adversely affected by a variety of political, economic or other factors relating to our operations inside and outside the United States, including impacts from global central bank monetary policy; issues related to the political relationship between the United States and other countries that can affect the willingness of customers in those countries to purchase products from companies headquartered in the United States; the impact of the novel coronavirus or other public health epidemics or concerns on our customer's component suppliers, and the challenging and inconsistent global macroeconomic environment, any or all of which could have a material adverse effect on our operating results and financial condition, including, among others, the following:

- Foreign currency exchange rates;
- Political or social unrest;
- Economic instability or weakness or natural disasters in a specific country or region, including the current economic or health challenges in China and global economic ramifications of Chinese economic difficulties; or instability as a result of Brexit;
- Environmental and trade protection measures and other legal and regulatory requirements, some of which may affect our ability to import our products, to export our products from, or sell our products in various countries;
- Political considerations that affect service provider and government spending patterns;
- Health or similar issues, such as a pandemic or epidemic, including the recent outbreak of a novel strain of coronavirus;
- Difficulties in staffing and managing international operations; or
- Adverse tax consequences, including imposition of withholding or other taxes on our global operations.

***Economic, political and market conditions can adversely affect our business, results of operations and financial condition.***

Our business is influenced by a range of factors that are beyond our control and that we have no comparative advantage in forecasting. These include but are not limited to general economic and business conditions, the overall demand for cloud-based products and services, general political developments and currency exchange rate fluctuations. Economic uncertainty may exacerbate negative trends in consumer spending and may negatively impact the businesses of certain of our customers, which may cause a reduction in their use of our platforms or increase their likelihood of defaulting on their payment obligations, and therefore cause a reduction in our revenues. These conditions and uncertainty about future economic conditions may make it challenging for us to forecast our operating results, make business decisions and identify the risks that may affect our business, financial conditions and results of operations. In addition, these factors could result in quarterly fluctuations in our business performance. Finally, changes in these conditions may result in a more competitive environment, resulting in possible pricing pressures.



Our business could be affected by acts of war, terrorism, natural disasters and the widespread outbreak of infectious diseases. Current world tensions could escalate, and this could have unpredictable consequences on the world economy and on our business. The ongoing coronavirus outbreak emanating from China at the beginning of 2020 has resulted in increased travel restrictions, the cancellation or rescheduling of trade shows and other events, and the extended shutdown of certain businesses. The spread of the novel coronavirus throughout the world may also create global economic uncertainty, which may cause partners, suppliers and potential customers to closely monitor their costs and reduce their spending budget. In addition, if the pandemic continues to spread, we may need to limit operations or implement limitations, including work from home policies. These or any further political or governmental developments or health concerns in countries could result in social, economic and labor instability. If, as a result of such events, we experience a reduction in demand for our products, platforms or services, or the supply of products or components to our customers, our business, results of operations and financial condition may be materially and adversely affected.

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

A natural disaster, telecommunications failure, power outage, cybersecurity attack, war, terrorist attack, health epidemics or pandemics, or other catastrophic event could cause us to suffer system interruptions, reputational harm, delays in product development, lack of products provided to our customers, breaches of data security and loss of critical data. An event of this nature could also prevent us from fulfilling customer orders or maintaining certain service level requirements, particularly in respect of our SaaS and hosted offerings. While we have developed certain disaster recovery plans and maintain backup systems to reduce the potentially adverse effect of these types of events, a catastrophic event that results in the destruction or disruption of any of our data centers or our critical business or information technology systems could severely affect our ability to conduct normal business operations and, as a result, our business, operating results and financial condition could be adversely affected.

***We may experience quarterly fluctuations in our operating results due to a number of factors which make our future results difficult to predict and could cause our operating results to fall below expectations or our guidance.***

Our operating results may fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Our past results should not be relied on as an indication of our future performance. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with GAAP. In addition, non-GAAP metrics we may disclose, such as EBITDA, and any corresponding trends in such metrics should not be relied on as an indication that our GAAP results, such as income (loss), will be similar or will follow the same trends. If our revenue or operating results fall below the expectations of investors or securities analysts or below any guidance we may provide to the market, the price of our common stock could decline substantially. Our operating results have varied in the past and are expected to continue to do so in the future.

***If we fail to compete successfully with existing or new competitors, our business could be harmed.***

If we fail to compete successfully with established or new competitors, it could have a material adverse effect on our results of operations and financial condition. The industries in which we operate are highly competitive and fragmented, and we expect competition to increase. We compete with independent providers of information systems and services and with the in-house departments of our OEMs and communications services companies' customers. Rapid technological changes, such as advancements in software integration across multiple and incompatible systems, and economies of scale may make it more economical for CSPs, MSOs or OEMs to develop their own in-house processes and systems, which may render some of our products and services less valuable or, eventually, obsolete. Our competitors include firms that provide comprehensive information systems and managed services solutions, BYOD providers, systems integrators, clearinghouses and service bureaus. Many of our competitors have long operating histories, large customer bases, substantial financial, technical, sales, marketing and other resources and strong name recognition.

Current and potential competitors have established, and may establish in the future, cooperative relationships among themselves or with third parties to increase their ability to address the needs of our current or prospective customers. In addition, our competitors have acquired, and may continue to acquire in the future, companies that may enhance their market offerings. Accordingly, new competitors or alliances among competitors may emerge and rapidly acquire significant market share. As a result, our competitors may be able to adapt more quickly than us to new or emerging technologies and changes in customer requirements and may be able to devote greater resources to the promotion and sale of their products. These relationships and alliances may also result in transaction pricing pressure, which could result in large reductions in the selling prices of our products and services. Our competitors or our customers' in-house solutions may also provide services at a lower cost, significantly increasing pricing pressure on us. We may not be able to offset the effects of this potential pricing pressure. Our failure to adapt to changing market conditions and to compete successfully with established or new competitors may have a material adverse effect on our results of operations and financial condition. In particular, a failure to offset competitive pressures brought about by competitors

or in-house solutions developed by our customers could result in a substantial reduction in or the outright termination of our contracts with some of our customers, which would have a significant, negative and material impact on our business, results of operations and financial condition.

***The markets in which we market and sell our products and services are highly competitive, and if we do not adapt to rapid technological change, we could lose customers or market share, which could adversely affect our ability to sustain or grow revenue.***

The industries we serve are characterized by rapid technological change and frequent new service offerings and are highly competitive with respect to the need for innovation. Significant technological changes could make our technology and services obsolete, less marketable or less competitive. We must adapt to these rapidly changing markets by continually improving the features, functionality, reliability and responsiveness of our products and services, and by developing new features, services and applications to meet changing customer needs and further address the markets we serve. Our ability to take advantage of opportunities in the markets we serve may require us to invest in development and incur other expenses well in advance of our ability to generate revenues from these offerings or services. We may not be able to timely adapt to these challenges or respond successfully or in a cost-effective way. Our failure to do so would adversely affect our ability to compete and retain customers and/or market share and could adversely affect our ability to sustain or grow revenue. In addition, as we expand our service offerings, we may face competition from new and existing competitors. It is also possible that our customers could decide to create, invest in or collaborate in the creation of competitive products that might limit or reduce their need for our products, services and solutions. Further, we may experience delays in the development of one or more features of our offerings, which could materially reduce the potential benefits to us providing these services. In addition, our present or future service offerings may not satisfy the evolving needs of the industry in which we operate. If we are unable to anticipate or respond adequately to these evolving market needs, due to resource, technological or other constraints, our business and results of operations could be harmed. In addition, the arrival of new market entrants could reduce the demand for our services or cause us to reduce our pricing, resulting in a loss of revenue and adversely affecting our business, results of operations and financial condition. Also, the use of internal technologies, developed by our customers or their advisers, could reduce the demand for our services, result in pricing pressures or cause a reduction in our revenue. If we fail to manage these challenges adequately, our business, results of operations and financial condition could be adversely affected.

***The success of our business depends on our ability to achieve or sustain market acceptance of our services and solutions at desired pricing levels.***

Our competitors and customers may cause us to reduce the prices we charge for our services and solutions. Our current or future competitors may offer our customers services at reduced prices or bundling and pricing services in a manner that may make it difficult for us to compete. Customers with a significant volume of transactions may attempt to use this leverage in pricing negotiations with us. Also, if our prices are too high, current or potential customers may find it economically advantageous to handle certain functions internally instead of using our services. We may not be able to offset the effects of any price reductions by increasing the number of transactions we handle or the number of customers we serve, by generating higher revenue from enhanced services or by reducing our costs. If these or other sources of pricing pressure cause us to reduce the pricing of our service or solutions below desirable levels, our business and results of operations may be adversely affected.

***Technology drives our products and services. If we fail to keep pace with technological advances in the industry, or if we pursue technologies that do not become commercially accepted, customers may not buy our products or use our services.***

The telecommunications industry uses numerous and varied technologies, and large service providers often invest in several, and sometimes incompatible, technologies. The industry also demands frequent and, at times, significant technology upgrades. Furthermore, enhancing our services revenues requires that we develop and maintain leading tools. We will not have the resources to invest in all existing and potential technologies. As a result, we expect to concentrate our resources on those technologies that we believe have or will achieve substantial customer acceptance and in which we will have appropriate technical expertise. However, existing products often have short product life cycles characterized by declining prices over their lives. In addition, our choices for developing technologies may prove incorrect if customers do not adopt the products that we develop or if those technologies ultimately prove to be unviable. Our revenues and operating results will depend, to a significant extent, on our ability to maintain a product portfolio and service capability that is attractive to our current and future customers; to enhance our existing products; to continue to introduce new products successfully and on a timely basis; and to develop new or enhance existing tools for our services offerings.

The development of new technologies remains a significant risk to us, due to the efforts that we still need to make to achieve technological feasibility, due to rapidly changing customer markets; and due to significant competitive threats.

Our failure to bring these products to market in a timely manner could result in a loss of market share or a lost opportunity to capitalize on new markets for emerging technologies and could have a material adverse impact on our business, operating results and financial condition.

***Though acceptance of cloud-based software has advanced in recent years, some businesses may still be hesitant to adopt these types of solutions.***

Our cloud-based service strategy may not be successful. We enable our customers to offer their subscribers the ability to backup, restore and share content across multiple devices through a cloud-based environment. Some businesses may still be uncertain as to whether a cloud-based service like ours is appropriate for their business needs. The success of our offerings is dependent upon continued acceptance by and growth in subscribers of cloud-based services in general and there can be no guarantee of the adoption rate by these subscribers. Many organizations have invested substantial personnel and financial resources to integrate traditional enterprise software into their organizations and, therefore, may be reluctant or unwilling to migrate to a cloud-based model for storing, accessing, sharing and managing their content. Because we derive, and expect to continue to derive, a substantial portion of our revenue and cash flows from sales of our cloud-based solutions, our success will depend to a substantial extent on the widespread adoption of cloud computing for companies in general. Our cloud strategy will continue to evolve, and we may not be able to compete effectively, generate significant revenues or maintain profitability. While we believe our expertise, investments in infrastructure, and the breadth of our cloud-based services provides us with a strong foundation to compete, it is uncertain whether our strategies will attract the users or generate the revenue required to be successful. In addition to software development costs, we incur costs to build and maintain infrastructure to support cloud-based services. It is difficult to predict customer adoption rates and demand for our services, the future growth rate and size of the cloud computing market or the entry of competitive services. The expansion of a cloud-based enterprise software market depends on a number of factors, including the cost, performance and perceived value associated with cloud computing, as well as the ability of companies that provide cloud-based services to address security and privacy concerns. If we or other providers of cloud-based services experience security incidents, loss of customer data, disruptions in delivery or other problems, the market for cloud-based services as a whole, including our services, may be negatively affected. If there is a reduction in demand for cloud-based services caused by a lack of customer acceptance, technological challenges, weakening economic conditions, security or privacy concerns, competing technologies and products, decreases in corporate spending or otherwise, we could experience decreased revenue, which could harm our growth rates and adversely affect our business and operating results.

***Government regulation of the Internet and e-commerce and of the international exchange of certain information is subject to possible unfavorable changes, and our failure to comply with applicable regulations could harm our business and operating results.***

As Internet commerce continues to evolve, increasing regulation by federal, state, local and foreign governments become more likely. For example, in recent years, numerous federal, state, local and foreign laws regarding privacy and the collection, processing, storage, sharing, disclosure, use or protection of personal information and other data have been enacted. The scope of these laws is expanding, they are subject to differing interpretations and may be costly to comply with and may be inconsistent between countries and jurisdictions or conflict with other rules. Further, laws and regulations applying to the solicitation, collection, processing or use of personal or consumer information could affect our customers' ability to use and share data, potentially reducing demand for our products and services. In addition, taxation of products and services provided over the Internet or other charges imposed by government agencies or by private organizations for accessing the Internet may also be imposed. Any regulation imposing greater fees for Internet use or restricting the exchange of information over the Internet could result in reduced growth or a decline in the use of the Internet and could diminish the viability of our Internet-based services, which could harm our business and operating results.

***Our business depends substantially on customers renewing and expanding their subscriptions for our services. Any decline in our customer renewals and expansions would harm our future operating results.***

We enter into subscription agreements with certain of our customers that are generally one to two years in length. As a result, maintaining the renewal rate of those subscription agreements is critical to our future success. We cannot provide assurance that any of our customer agreements will be renewed, as our customers have no obligation to renew their subscriptions for our services after the expiration of the initial term of their agreements. The loss of any customers that individually or collectively account for a significant amount of our revenues would have a material adverse effect on our results of operations or financial condition. If our renewal rates are lower than anticipated or decline for any reason, or if customers renew on terms less favorable to us, our revenue may decrease, and our profitability and gross margin may be harmed, which would have a material adverse effect on our business, results of operations and financial condition.

***If we do not maintain the compatibility of our services with third-party applications that our customers use in their business processes or if we fail to adapt our services to changes in technology or the marketplace, demand for our services could decline.***

Our solutions can be used alongside a wide range of other systems such as email and enterprise software systems used by our customers in their businesses. If we do not support the continued integration of our products and services with third-party applications, including through the provision of application programming interfaces that enable data to be transferred readily between our services and third-party applications, demand for our services could decline and we could lose sales or experience declining renewal rates. We will also be required to make our products and services compatible with new or additional third-party applications that are introduced to the markets that we serve and, if we are not successful, we could experience reduced demand for our services. In addition, prospective customers, especially large enterprise customers, may require heavily customized features and functions unique to their business processes. If prospective customers require customized features or functions that we do not offer and that would be difficult for them to develop and integrate within our services, then the market for our products and services may be adversely affected.

We may not currently or in the future appropriately leverage advances in technology to achieve or sustain a competitive advantage in products, services, information and processes. Our customers and users regularly adopt new technologies and industry standards continue to evolve. The introduction of products or services and the emergence of new industry standards can render our existing services obsolete and unmarketable in short periods of time. We expect others to continue to develop and introduce new and enhance existing products and services that will compete with our services. Our future success will depend, in part, on our ability to enhance our current services and to develop and introduce new services that keep pace with technological developments, emerging industry standards and the needs of our customers. We cannot assure that we will be successful in cost-effectively developing, marketing and selling new services or service enhancements that meet these changing demands on a timely basis, that we will not experience difficulties that could delay or prevent the successful development, introduction and marketing of these services, or that our new service and service enhancements will adequately meet the demands of the marketplace and achieve market acceptance. We also cannot assure that the features that we believe will drive purchasing decisions will in fact be the features that our current or potential customers consider most significant.

***Our revenue, earnings and profitability are affected by the length of our sales cycle, and a longer sales cycle could adversely affect our results of operations and financial condition.***

Our business is directly affected by the length of our sales cycles. Our customers' businesses are relatively complex and their purchase of the types of services that we offer generally involve a significant financial commitment, with attendant delays frequently associated with large financial commitments and procurement procedures within an organization. In addition, as we continue to further penetrate the enterprise and the size and complexity of our sales opportunities continue to expand, we have seen an increase in the average length of time in our sales cycles. The purchase of the types of services that we offer typically also requires coordination and agreement across many departments within a potential customer's organization. Delays associated with such timing factors could have a material adverse effect on our results of operations and financial condition. In periods of economic slowdown our typical sales cycle lengthens, which means that the average time between our initial contact with a prospective customer and the signing of a sales contract increases. The lengthening of our sales cycle could reduce growth in our revenue. In addition, the lengthening of our sales cycle contributes to an increased cost of sales, thereby reducing our profitability.

***We traditionally have had substantial customer concentration, with a limited number of customers accounting for a substantial portion of our revenues.***

Our top five customers accounted for 69.2% for the year ended December 31, 2019 compared to 69.0% for the year ended December 31, 2018. Of these customers, Verizon accounted for more than 10% of our revenues in 2019, 2018, and 2017. There are inherent risks whenever a large percentage of total revenues are concentrated with a limited number of customers.

It is not possible for us to predict the future level of demand for our services that will be generated by these customers or the future demand for the products and services of these customers in the end-user marketplace. In addition, revenues from these larger customers may fluctuate from time to time based on the commencement and completion of projects, the timing of which may be affected by market conditions or other factors, some of which may be outside of our control. Further, some of our contracts with these larger customers permit them to terminate our services at any time (subject to notice and certain other provisions). If any of our major customers experience declining or delayed sales due to market, economic or competitive conditions, we could be pressured to reduce the prices we charge for our services or we could lose the customer. Any such development could have an adverse effect on our margins and financial position and would negatively affect our revenues and results of operations and/or trading price of our common stock.

***Our revenue for a particular period may be difficult to predict, and a shortfall in revenue may harm our operating results.***

As a result of a variety of factors discussed in this report, our revenue for a particular quarter is difficult to predict, especially in light of a challenging and inconsistent global macroeconomic environment and related market uncertainty. Our revenue may grow at a slower rate than in past periods or decline as it has in the past on a year-over-year basis. Our ability to meet financial expectations could also be adversely affected if the nonlinear sales pattern seen in some of our past quarters recurs in future periods.

The timing of large orders can also have a significant effect on our business and operating results from quarter to quarter. From time to time, we receive large orders that have a significant effect on our operating results in the period in which the order is recognized as revenue. The timing of such orders is difficult to predict, and the timing of revenue recognition from such orders may affect period to period changes in revenue. As a result, our operating results could vary materially from quarter to quarter based on the receipt of such orders and their ultimate recognition as revenue.

We plan our operating expense levels based primarily on forecasted revenue levels. These expenses and the impact of long-term commitments are relatively fixed in the short term. A shortfall in revenue could lead to operating results being below expectations because we may not be able to quickly reduce these fixed expenses in response to short-term business changes.

Any of the above factors could have a material adverse impact on our operations and financial results.

***Because we recognize revenue for certain of our products and services ratably over the term of our customer agreements, downturns or upturns in the value of signed contracts will not be fully and immediately reflected in our operating results.***

We offer certain of our products and services primarily through fixed or variable commitment contracts and recognize revenue ratably over the related service period, which typically ranges from twelve to twenty-four months. As a result, some portion of the revenue we report in each quarter is revenue from contracts entered into during prior periods. Consequently, a decline in signed contracts in any quarter will not be fully and immediately reflected in revenue for that quarter but may instead negatively affect our revenue in future quarters. In addition, we may be unable to adjust our cost structure to offset this reduced revenue. Similarly, revenue attributable to an increase in contracts signed in a particular quarter will not be fully and immediately recognized, as revenue from new or renewed contracts is recognized ratably over the applicable service period. Because we incur certain sales costs at the time of sale, we may not recognize revenues from some customers despite incurring considerable expense related to our sales processes. Timing differences of this nature could cause our margins and profitability to fluctuate significantly from quarter to quarter.

***Our offerings of new services or products may be subject to complex revenue recognition standards, which could materially affect our financial results.***

As we introduce new services or products, revenue recognition could become increasingly complex and require additional analysis and judgment. Additionally, for new contracts with existing customers, we may negotiate and revise previously used terms and conditions of our contracts with these customers and channel partners, which may also cause us to revise our revenue recognition policies. As our arrangements with customers change, we may be required to defer a greater portion of revenue into future periods, which could materially and adversely affect our financial results.

***Failure to maintain the confidentiality, integrity and availability of our systems, software and solutions could seriously damage our reputation and affect our ability to retain customers and attract new business.***

Maintaining the confidentiality, integrity and availability of our systems, software and solutions is an issue of critical importance for us and for our customers and users who rely on our systems to store and exchange large volumes of information, much of which is proprietary and confidential. There appears to be an increasing number of individuals, governments, groups and computer “hackers” developing and deploying a variety of destructive software programs (such as viruses, worms and other malicious software) that could attack our computer systems or solutions or attempt to infiltrate our systems. We make significant efforts to maintain the confidentiality, integrity and availability of our systems, solutions and source code. Despite significant efforts to create security barriers, it is virtually impossible for us to mitigate this risk entirely because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not recognized until launched against a target. Like all software solutions, our software is vulnerable to these types of attacks. An attack of this type could disrupt the proper functioning of our software solutions, cause errors in the output of our customers’ work, allow unauthorized access to sensitive, proprietary or confidential information of ours or our customers and other destructive outcomes. If an actual or perceived breach of our security were to occur, our reputation could suffer, customers could stop buying our solutions and we could face lawsuits and potential liability, any of which could cause our financial performance to be negatively impacted. Though we maintain professional liability insurance that may be available to provide coverage if a cybersecurity incident were to occur, there can be no assurance that

insurance coverage will be available or that available coverage will be sufficient to cover losses and claims related to any cybersecurity incidents we may experience.

There is also a danger of industrial espionage, cyber-attacks, misuse or theft of information or assets (including source code), or damage to assets by people who have gained unauthorized access to our facilities, systems or information, which could lead to the disclosure of portions of our source code or other confidential information, improper usage and distribution of our solutions without compensation, illegal or inappropriate usage of our systems and solutions, jeopardizing of the security of information stored in and transmitted through our computer systems, manipulation and destruction of data, defects in our software and downtime issues. Although we actively employ measures to combat unlicensed copying, access and use of our facilities, systems, software and intellectual property through a variety of techniques, preventing unauthorized use or infringement of our rights is inherently difficult. The occurrence of an event of this nature could adversely affect our financial results or could result in significant claims against us for damages. Further, participating in either a lawsuit to protect against unauthorized access to, usage of or disclosure of any of our solutions or any portion of our source code or the prosecution of an individual in connection with a cybersecurity breach could be costly and time-consuming and could divert management's attention and adversely affect the market's perception of us and our solutions.

A number of core processes, such as software development, sales and marketing, customer service and financial transactions, rely on our IT, infrastructure and applications. Defects or malfunctions in our IT infrastructure and applications could cause our service offerings not to perform as our customers expect, which could harm our reputation and business. In addition, malicious software, sabotage and other cybersecurity breaches of the types described above could cause an outage of our infrastructure, which could lead to a substantial denial of service and ultimately downtimes, recovery costs and customer claims, any of which could have a significant negative impact on our business, financial position, profit and cash flows.

The confidentiality, integrity and availability of our systems could also be jeopardized by a breach of our internal controls and policies by our employees, consultants or subcontractors having access to our systems. If our systems fail or are breached as a result of a third-party attack or an error, violation of internal controls or policies or a breach of contract by an employee, consultant or subcontractor that results in the unauthorized use or disclosure of proprietary or confidential information or customer data (including information about the existence and nature of the projects and transactions our customers are engaged in), we could lose business, suffer irreparable damage to our reputation and incur significant costs and expenses relating to the investigation and possible litigation of claims relating to such event. We could be liable for damages, penalties for violation of applicable laws or regulations and costs for remediation and efforts to prevent future occurrences, any of which liabilities could be significant. There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages with respect to any particular claim. We also cannot assure that our existing general liability insurance coverage, coverage for errors and omissions and cyber liability insurance will continue to be available on acceptable terms in sufficient amounts to cover one or more large claims, or that the insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, financial condition and results of operations. Furthermore, litigation, regardless of its outcome, could result in a substantial cost to us and divert management's attention from our operations. Any significant claim against us or litigation involving us could have a material adverse effect on our business, financial condition and results of operations.

We have implemented a number of security measures designed to ensure the security of our information, IT resources and other assets. Nonetheless, unauthorized users could gain access to our systems through cyber-attacks and steal, use without authorization and sabotage our intellectual property and confidential data. Any security breach, misuse of our IT systems or theft of our or our customers' intellectual property or data could lead to customer losses, non-renewal of customer agreements, loss of production, recovery costs or litigation brought by customers or business partners, any of which could adversely impact our cash flows and reputation and could have an adverse impact on our disclosure controls and procedures.

***Undetected errors or failures found in our products and services may result in loss of or delay in market acceptance of our products and services that could seriously harm our business.***

Our products and services may contain undetected errors or scalability limitations at any point in their lives, but particularly when first introduced or as new versions are released. We frequently release new versions of our products and different aspects of our platforms are in various stages of development. Despite testing by us and by current and potential customers, errors may not be found in new products and services until after commencement of commercial availability or use, resulting in a loss of or a delay in market acceptance, damage to our reputation, customer dissatisfaction and reductions in revenues and margins, any of which could seriously harm our business. Additionally, our agreements with customers that attempt to limit our exposure to liability claims may not be enforceable in jurisdictions where we operate, particularly in certain markets outside the United States.

***Many of our current and planned products are highly complex and may contain defects or errors that are detected only after deployment in telecommunications networks. If that occurs, our reputation may be harmed.***

Our products are highly complex, and we cannot assure customers that our extensive product development, production and integration testing is, or will be, adequate to detect all defects, errors, failures and quality issues that could affect customer satisfaction or result in claims against us. As a result, we might have to replace certain components and/or provide remediation in response to the discovery of defects in products that have been supplied to customers.

The occurrence of any defects, errors, failures or quality issues could result in cancellation of orders, product returns, diversion of our resources, legal actions by customers or customers' end users and other losses to us or to our customers or end users. These occurrences could also result in the loss of or delay in market acceptance of our products, in the loss of sales, or in the need to create provisions, which would harm our business and adversely affect our revenues and profitability.

***We collect, process, store, disclose and use personal information and other data, and our actual or perceived failure to protect this information and data could damage our reputation and brand and harm our business and operating results.***

We collect, process, store, disclose and use personal information and other data provided by our customers and their end users. We rely on encryption and authentication technology licensed from third parties to effectively secure transmission of this information.

There are numerous federal, state, local and foreign laws regarding privacy and the collection, processing, storage, sharing, disclosure, use or protection of personal information and other data. The scope of these laws is changing, they are subject to differing interpretations and they may be costly to comply with and may be inconsistent between countries and jurisdictions or conflict with other rules.

Numerous jurisdictions are currently considering, or have recently enacted, data protection legislation. For example, on June 28, 2018, California enacted the California Consumer Privacy Act of 2018, which we refer to as the California Privacy Act. The California Privacy Act, which took effect on January 1, 2020 but contains a "lookback" to January 1, 2019, imposes sweeping data protection obligations on many companies doing business in California and provides for substantial fines for non-compliance and, in some cases, a private right of action for consumers who are victims of data breaches involving their unencrypted personal information. As a result of the continuing uncertainty surrounding the manner of enforcement of the California Privacy Act and the rapidly approaching deadline for compliance, we may be required to modify our data processing practices and policies, products and consumer experience in a manner that materially negatively impacts our business, operating results, financial condition and prospects.

Legislation similar to the California Privacy Act has also passed in other states, including Colorado, Maine, Nevada and Utah. The potential effects of these states' legislation are far-reaching and may require us to incur substantial costs and expenses in an effort to comply, and it is unclear whether, and if so how, the United States Congress will respond to these overlapping, state-by-state enactments.

We strive to monitor the changing regulatory environment and to address the new requirements of applicable laws and regulations and other mandatory obligations relating to privacy and data protection. However, it is possible that these obligations may be interpreted and applied in new ways or in a manner that is inconsistent from one jurisdiction to another, that they may conflict with other rules or our practices or that new regulations could be enacted. If we do not properly comply with privacy regulations and contractual obligations that require us to protect confidential information, or if we experience a security breach or network compromise, we could experience adverse consequences, including regulatory sanctions, penalties or fines, increased compliance costs, remedial costs such as providing credit monitoring or other services to affected customers, litigation and damage

to our reputation, which in turn could result in decreased revenues and loss of customers, all of which would have a material adverse effect on our business, financial condition and results of operations.

In addition to the increasing technical and financial burdens they impose on our business, the rapid legislative and other legal developments in this field create considerable uncertainties and impose substantial compliance costs and challenges. Any failure or perceived failure by us to comply with our privacy policies, our privacy-related obligations to consumers or other third parties or our privacy-related legal obligations, including those imposed by the California Privacy Act and other state privacy laws, or any compromise of security that results in the unauthorized release or transfer of sensitive information, which may include personally identifiable information or other user data, may result in governmental enforcement actions, litigation or public statements against us by consumer advocacy groups or others. Any of these consequences could cause current or potential customers to lose trust in us, which could have a material adverse effect on our business and prospects. Additionally, if vendors, developers or other third parties that we work with violate applicable laws or our policies, such violations may also put customer or end user information at risk and could in turn harm our reputation, business and operating results.

***Compliance with changing data protection and European privacy laws could require us to incur significant costs or experience significant business disruption and failure to comply could result in an adverse impact on our business.***

We process personal data of individuals in connection with offering our solutions to customers and their end users in the European Union (“EU”) and we also process personal data about our and our affiliates’ employees in the EU.

EU Directive 95/46/EC (the “Directive”), which covers the protection of the processing of personal data about individuals and on the free movement of such data, has required European Union member states to implement data protection laws to meet the strict privacy requirements of the Directive. Among other requirements, the Directive has regulated transfers of personal data that is subject to the Directive, (“Personal Data”) to countries, outside the European Economic Area, (the “EEA”), that have not been found to provide adequate protection to such Personal Data.

We have undertaken efforts to conform transfers of Personal Data from the EEA based on current regulatory obligations, the guidance of data protection authorities and evolving best practices. Despite these efforts, including due to ongoing legal challenges to the EU’s standard contractual clauses there is a possible risk regarding data transfer mechanisms that are available to us.

Effective as of May 25, 2018, the Directive (and member states’ implementations thereof) was replaced by the requirements of Regulation (EU) 2016/679, the GDPR. The GDPR re-defines what information is considered to be Personal Data and applies to any company established in the EU, as well as companies outside the EU that collect and use Personal Data in connection with offering goods or services to individuals in the EU or that monitor the behavior of EU residents (for example, through monitoring of online activities). The GDPR increases data protection obligations for data controllers and provides for direct obligations for data processors. The GDPR imposes specific and expanded disclosure obligations about how we may use Personal Data; limitations on how much information we can collect and for how long it can be retained; expanded contract requirements with our processors and sub-processors, as applicable, even for existing relationships; requirements regarding our accountability and transparency related to Personal Data; increased Data Subject rights, and mandatory data breach notification requirements. Given the breadth and depth of changes in these data protection and privacy obligations, our preparations to meet the GDPR’s requirements required a significant expenditure of time and resources, including reviewing the technologies, systems and procedures that we currently use against the GDPR’s requirements. Our preparations include as applicable: updating our Privacy Notices and Cookie Policy; updating our Data Protection Policy and Security Policy; providing data privacy training to all employees; and negotiating data protection agreements with our applicable customers and suppliers. We have worked with a third party to assist us in undertaking a data protection review, and implementing any remedial changes designed to ensure GDPR compliance.

The GDPR expands the scope of direct liability to both data controllers and data processors. Depending on the nature of the violation, non-compliance could result in fines of up to €20 million or 4% of our total worldwide annual turnover, whichever is higher. Under the GDPR, supervisory data protection authorities can also conduct audits, issue warnings and public censures, and order the temporary or permanent suspension of data transfers and/or data processing activities (that is, our business as it relates to EU data subjects would be shut down). Also, EU data subjects may seek enforcement of their individual rights through a supervisory authority or through a judicial remedy in national court. In addition to this private right of action for individuals, the GDPR also provides that data subjects may claim through the EU equivalent of consumer class actions.

Separate from the GDPR, there are other EU laws and regulations (and member states’ implementations thereof) that apply to the protection of consumers and electronic communications and that are also evolving, which may apply to our businesses. For instance, the current European laws that cover the use of cookies and similar technology and marketing online or by electronic means are under reform. A draft of the new ePrivacy Regulation extends the strict opt-in marketing rules (with limited exceptions



for business-to-business communications), alters rules on third-party cookies, web beacons and similar technology and significantly increases penalties.

We may incur substantial expense in attempting to comply with the new data privacy obligations described above and we may be required to make significant changes in our business operations and product and services development, all of which may adversely affect our revenues and our business.

We may also experience hesitancy, reluctance or refusal by European or multi-national customers to continue to use our services due to the potential risk exposure that these customers might face as a result the current or future data protection obligations imposed on them by certain data protection authorities. These customers may also view any alternative approaches to compliance as being too costly, too burdensome, too legally uncertain or otherwise objectionable and therefore decide not to do business with us.

We and our customers are at risk of enforcement actions taken by certain EU data protection authorities for any breaches of applicable data protection legislation. We may find it necessary to establish additional or different physical, technical or administrative procedures or systems to maintain Personal Data originating from the EU in the EEA, which may involve substantial expense and may cause us to need to divert resources from other aspects of our business, all of which may adversely affect our business. As a result, we may be required to make significant changes in our business operations, all of which may adversely affect our revenues and our business overall.

***Compromises to our privacy safeguards or disclosure of confidential information could impact our reputation.***

Names, addresses, telephone numbers, credit card data and other personal identification information, (“PII”) are collected, processed and stored in our systems. Our treatment of this kind of information is subject to contractual restrictions and federal, state and foreign data privacy laws and regulations. We have implemented technical and organizational steps designed to protect against unauthorized access to such information and comply with these laws and regulations. Because of the inherent risks and complexities involved in protecting this information, the steps we have taken to protect PII may not be sufficient to prevent the misappropriation or improper disclosure of such PII. If misappropriation or disclosure of PII were to occur, our business could be harmed through reputational injury, litigation and possible damages claimed by the affected end customers, including in some cases costs related to customer notification and fraud monitoring, or potential fines from regulatory authorities. We may need to incur significant costs or modify our business practices and/or our services in order to comply with these data privacy and protection laws and regulations in the future. Even the mere perception of a security breach or inadvertent disclosure of PII could adversely affect our business and results of operations. In addition, third-party vendors that we engage to perform services for us may unintentionally release PII or otherwise fail to comply with applicable laws and regulations. Our insurance may not cover potential claims of this type or may not be adequate to cover all costs incurred in defense of potential claims or to indemnify us for all liability that may be imposed. Concerns about the security of online transactions and the privacy of PII could deter consumers from transacting business with us on the Internet. The occurrence of any of these events could have an adverse effect on our business, financial position, and results of operations.

***Downgrades in our credit ratings may increase our future borrowing costs, limit our ability to raise capital, cause our stock price to decline or reduce analyst coverage, any of which could have a material adverse impact on our business.***

Credit rating agencies review their ratings periodically and, therefore, the credit rating assigned to us by each of the rating agencies may be subject to revision at any time. Factors that can affect our credit ratings include changes in our operating performance, the economic environment, our financial position, conditions in and periods of disruption in any of our principal markets and changes in our business strategy. If weak financial market conditions or competitive dynamics cause any of these factors to deteriorate, we could see a reduction in our corporate credit rating. Since investors, analysts and financial institutions often rely on credit ratings to assess a company’s creditworthiness and risk profile, make investment decisions and establish threshold requirements for investment guidelines, our ability to raise capital, our access to external financing, our stock price and analyst coverage of our stock could be negatively impacted by a downgrade to our credit rating.

***Changes in laws, regulations or governmental policy applicable to our customers or potential customers may decrease the demand for our solutions or increase our costs.***

The level of our customers’ and potential customers’ activity in the business processes our services are used to support is sensitive to many factors beyond our control, including governmental regulation and regulatory policies. Many of our customers and potential customers in the telecommunications and other industries are subject to substantial regulation and may be the subject of further regulation in the future. Accordingly, significant new laws or regulations or changes in, or repeals of, existing laws, regulations or governmental policy may change the way these customers do business and could cause the demand for and sales

of our solutions to decrease. Any change in the scope of applicable regulations that either decreases the volume of transactions that our customers or potential customers enter into or otherwise negatively impacts their use of our solutions would have a material adverse effect on our revenues or gross margins, or both. Moreover, complying with increased or changed regulations could cause our operating expenses to increase as we may have to reconfigure our existing services or develop new services to adapt to new regulatory rules and policies, either of which would require additional expense and time. Additionally, the information provided by, or residing in, the software or services we provide to our customers could be deemed relevant to a regulatory investigation or other governmental or private legal proceeding involving our customers, which could result in requests for information from us that could be expensive and time consuming for us to address or harm our reputation since our customers rely on us to protect the confidentiality of their information. These types of changes could adversely affect our business, results of operations and financial condition.

***Fraudulent Internet transactions could negatively impact our business.***

Our business may be exposed to risks associated with Internet credit card fraud and identity theft that could cause us to incur unexpected expenditures and loss of revenues. Under current credit card practices, a merchant is liable for fraudulent credit card transactions when, as is the case with the transactions we process, that merchant does not obtain a cardholder's signature. Although our customers currently bear the risk for a fraudulent credit card transaction, in the future we may be forced to share some of that risk and the associated costs with our customers. To the extent that technology upgrades or other expenditures are required to prevent credit card fraud and identity theft, we may be required to bear the costs associated with such expenditures. In addition, to the extent that credit card fraud and/or identity theft cause a decline in business transactions over the Internet generally, both the business of our customers and our business could be adversely affected.

***Consolidation in the communications industry or the other industries that we serve can reduce the number of actual and potential customers and adversely affect our business.***

There has been, and there continues to be, merger, acquisition, alliance and consolidation activity among our customers. Mergers, acquisitions, alliances or consolidations of companies in the communications industry or other industries that we serve, have reduced and may continue to reduce the number of our customers and potential customers for our solutions, resulting in a smaller market for our services, which could have a material adverse impact on our business and results of operations. In addition, it is possible that the larger institutions that result from mergers or consolidations could themselves perform some or all of the services that we currently provide or could provide in the future. Should one or more of our significant customers acquire, consolidate or enter into an alliance with an entity or decide to either use a different service provider or to manage its transactions internally, this could have a negative material impact on our business. Any such consolidations, alliances or decisions to manage transactions internally may cause us to lose customers or require us to reduce prices as a result of enhanced customer leverage, which would have a material adverse effect on our business. We may not be able to offset the effects of any price reductions. We may not be able to expand our customer base to make up any revenue declines if we lose customers or if our transaction volumes decline.

***Failures or interruptions of our systems and services could materially harm our revenues, impair our ability to conduct our operations and damage relationships with our customers.***

Our success depends on our ability to provide reliable services to our customers and process a high volume of transactions in a timely and effective manner. Although we operate disaster recovery solutions, our network operations are susceptible to damage or interruption from human error, fire, flood, power loss, telecommunications failure, terrorist attacks and similar events. We could also experience failures or interruptions of our systems and services, or other problems in connection with our operations, as a result of, among other things:

- damage to, or failure of, our computer software or hardware or our connections and outsourced service arrangements with third parties;
- errors in the processing of data by our systems;
- computer viruses or software defects;
- physical or electronic break-ins, sabotage, intentional acts of vandalism and similar events;
- fire, cybersecurity attack, terrorist attack or other catastrophic event;
- increased capacity demands or changes in systems requirements of our customers; or
- errors by our employees or third-party service providers.

We rely on various systems and applications to support our internal operations, including our billing, financial reporting and customer contracting functions. The availability of these systems and applications is essential to us and delays, disruptions or performance problems may adversely impact our ability to accurately bill our customers, report financial information and conduct our business. Additionally, we may choose to replace or implement changes to these systems, including substituting traditional

systems with cloud-based solutions, which could be time-consuming and expensive, and which could result in delays in the ongoing operational processes these software solutions support. Further, our cloud-based solutions may experience disruptions and outages that are beyond our control as we rely on third-party vendors to support these solutions and assure their continued availability. We have also acquired a number of companies, products, services and technologies over the last several years. While we make significant efforts to address any IT security issues with respect to our acquisitions, we may still inherit certain risks when we integrate these acquisitions. In addition, our business interruption insurance may be insufficient to compensate us for losses or liabilities that may occur. Any interruptions in our systems or services could damage our reputation and substantially harm our business and results of operations.

***The quality of our support and services offerings is important to our customers and if we fail to meet our service level obligations under our service level agreements or otherwise fail to offer quality support and services, we would be subject to penalties and could lose customers.***

Our customers generally depend on our service organization to resolve issues relating to the use of our solutions. A high level of support is critical for the successful marketing and sale of our solutions. If we are unable to provide a level of support and service to meet or exceed the expectations of our customers, we could experience:

- loss of customers and market share;
- difficulty attracting or the inability to attract new customers, including in new geographic regions; and
- increased service and support costs and a diversion of resources.

Any of the above results would likely have a material adverse impact on our business, revenue, results of operations, financial condition and reputation.

In addition, we have service level agreements with many of our customers under which we guarantee specified levels of service availability. These arrangements involve the risk that we may not have adequately estimated the level of service we will in fact be able to provide. The importance of high-quality customer support will increase as we expand our business and pursue new enterprise customers. If we fail to meet our service level obligations under these agreements, we would be subject to penalties, which could result in higher than expected costs, decreased revenues and decreased operating margins. We could also lose customers.

***The financial and operating difficulties in the telecommunications sector may negatively affect our customers and our company.***

The telecommunications sector has at times faced significant challenges resulting from significant changes in technology and consumer behavior, excess capacity, poor operating results and financing difficulties. The sector's financial status has also at times been uncertain and access to debt and equity capital has been seriously limited. The impact of these events on us could include slower collection on accounts receivable, higher bad debt expense, uncertainties due to possible customer bankruptcies, lower pricing on new customer contracts, lower revenues due to lower usage by the end customer and possible consolidation among our customers, which will put our customers and operating performance at risk. In addition, because we operate in the communications sector, we may also be negatively impacted by limited access to debt and equity capital.

***Our performance and growth depend on our ability to generate customer referrals and to develop referenceable customer relationships that will enhance our sales and marketing efforts. A failure to accomplish these objectives could materially harm our business.***

In our business, we depend on end-users of our solutions to generate customer referrals for our services. We depend in part on members of the communications industry, financial institutions, legal service providers and other third parties who use our services to recommend them to a larger customer base than we can reach through our direct sales and internal marketing efforts. These referrals are an important source of new customers for our services and generally are made without expectation of compensation. We intend to continue to focus our marketing efforts on these referral partners in order to expand our reach and improve the efficiency of our sales efforts.

We also recognize that having respected, well known, market-leading customers who have committed to deploy our solutions within their organizations will support our marketing and sales efforts, as these customers can act as references for us and our product offerings. Our ability to establish and maintain these customer relationships is important to our future profitability. The willingness of these types of customers to provide referrals or serve as anchor or reference customers depends on a number of factors, including the performance, ease of use, reliability, reputation and cost-effectiveness of our services as compared to those offered by our competitors, as well as the internal policies of these customers. We may not be able to cultivate or maintain the strong relationships with customers that are necessary to develop those customer relationships into referenceable accounts.

The loss of any of our significant referral sources, including our anchor customers, or a decline in the number of referrals we receive or anchor customers that we generate could require us to devote substantially more resources to the sales and marketing of our services, which would increase our costs, potentially lead to a decline in our revenue, slow our growth and generally have a material adverse effect on our business, results of operations and financial condition. In addition, the revenue we generate from our referral and anchor relationships may vary from period to period.

***We rely in part on strategic relationships with third parties to sell and deliver our solutions. If we are unable to successfully develop and maintain these relationships, our business may be harmed.***

In addition to generating customer referrals through third-party users of our solutions, we intend to pursue relationships with other third parties such as technology and content providers and implementation and distribution partners. Our future growth will depend, at least in part, on our ability to enter into and maintain successful strategic relationships with these third parties. Identifying partners and negotiating and documenting relationships with them requires significant time and resources, as does integrating third-party content and technology. Some of the third parties with whom we have strategic relationships have entered and may continue to enter into strategic relationships with our competitors. Further, these third parties may have multiple strategic relationships and may not regard us as significant for their businesses. As a result, they may choose to offer their services on terms that are unfavorable to us, terminate their respective relationships with us, pursue other partnerships or relationships, or attempt to develop or acquire services or solutions that compete with ours. Our relationships with strategic partners could also interfere with our ability to enter into desirable strategic relationships with other potential partners in the future. If we are unsuccessful in establishing or maintaining relationships with strategic partners on favorable economic terms, our ability to compete in the marketplace or to grow our revenue could be impaired, and our business, results of operations and financial condition would suffer. Even if we are successful, we cannot provide assurance that these relationships will result in increased revenue or customer usage of our solutions or that the economic terms of these relationships will not adversely affect our margins.

***We are exposed to our customers' credit risk.***

We are subject to the credit risk of our customers and customers with liquidity issues may lead to bad debt expense for us. Most of our sales are on an open credit basis, with typical payment terms between 45 and 60 days in the United States and, because of local customs or conditions, longer payment terms in some markets outside the United States. We use various methods to screen potential customers and establish appropriate credit limits, but these methods cannot eliminate all potential bad credit risks and may not prevent us from approving applications that are fraudulently completed. Moreover, businesses that are good credit risks at the time of application may become bad credit risks over time and we may fail to detect this change. We maintain reserves we believe are adequate to cover exposure for doubtful accounts. If we fail to adequately assess and monitor our credit risks, we could experience longer payment cycles, increased collection costs and higher bad debt expense. A decrease in accounts receivable resulting from an increase in bad debt expense could adversely affect our liquidity. Our exposure to credit risks may increase if our customers are adversely affected by a difficult macroeconomic environment, or if there is a continuation or worsening of the economic environment. Although we have programs in place that are designed to monitor and mitigate the associated risk, including monitoring of particular risks in certain geographic areas, there can be no assurance that these programs will be effective in reducing our credit risks or preventing us from incurring additional losses. Future and additional losses, if incurred, could harm our business and have a material adverse effect on our business operating results and financial condition. Additionally, to the degree that the current or future credit markets makes it more difficult for some customers to obtain financing, those customers' ability to pay could be adversely impacted, which in turn could have a material adverse impact on our business, operating results, and financial condition.

***Our reliance on third-party providers for communications software, services, hardware and infrastructure exposes us to a variety of risks we cannot control.***

Our success depends on software, equipment, network connectivity and infrastructure hosting services supplied by, or leased from, our vendors and customers. In addition, we rely on third-party vendors to perform a substantial portion of our exception handling services. We may not be able to continue to purchase the necessary software, equipment and services from vendors on acceptable terms or at all. If we are unable to maintain current purchasing terms or ensure service availability with these vendors and customers, we may lose customers and experience an increase in costs in seeking alternative supplier services. Further, any changes in our third-party vendors could detract from management's ability to focus on the ongoing operations of our business or could cause delays in the operations of our business.

Our business also depends upon the capacity, reliability and security of the infrastructure owned and managed by third parties, including our vendors and customers that are used by our technology interoperability services, network services, number portability services, call processed services and enterprise solutions. We have no control over the operation, quality or maintenance of a significant portion of that infrastructure and whether those third parties will upgrade or improve their software, equipment and

services to meet our and our customers' evolving requirements. We depend on these companies to maintain the operational integrity of our services. If one or more of these companies is unable or unwilling to supply or expand its levels of services to us in the future, our operations could be severely interrupted. In addition, rapid changes in the communications industry have led to industry consolidation. This consolidation may cause the availability, pricing and quality of the services we use to vary and could lengthen the amount of time it takes to deliver the services that we use.

Any damage to, or failure or capacity limitations of, our systems and our related network could result in interruptions in our service that could cause us to lose revenue, issue credits or refunds or could cause our customers to terminate their subscriptions for our services, in each case adversely affecting our renewal rates. Since our customers use our service for important aspects of their businesses, any errors, defects, disruptions in service or other performance problems could hurt our reputation and may damage our customers' businesses. As a result, we may lose revenue, issue credits or refunds or customers could elect not to renew our services or delay or withhold payments to us. We could also lose future sales or customers may make claims against us, which could result in an increase in our provision for doubtful accounts, an increase in collection cycles for accounts receivable or the expense or risk of litigation.

Additionally, third-party software underlying our services can contain undetected errors or bugs. We may be forced to delay commercial release of our services until any discovered problems are corrected and, in some cases, may need to implement enhancements or modifications to correct errors that we do not detect until after deployment of our services. In addition, problems with the third-party software underlying our services could result in:

- damage to our reputation;
- loss of or delayed revenue;
- loss of customers;
- warranty claims or litigation;
- loss of or delayed market acceptance of our services; or
- unexpected expenses and diversion of resources to remedy errors.

***We are participants in several joint ventures, which may subject us to certain risks relating to our ability to perform our obligations under the joint ventures, including funding future joint venture capital requirements.***

Entering into joint ventures and alliances entails risks, including difficulties in developing and expanding the business of a newly formed joint venture, funding capital calls for the joint venture, exercising influence over the management and activities of joint venture, quality control concerns regarding joint venture products and services and potential conflicts of interest with the joint venture and our joint venture partner. We cannot guarantee that the joint venture operations will be successful. Any inability to meet our obligations as a joint venture partner under the joint ventures could result in penalties and reduced percentage interest in the joint venture for our company. Also, we could be disadvantaged in the event of disputes and controversies with a joint venture partner, since one of our joint venture partners is a relatively significant customer of our products and services and future product and services of the joint venture.

***If we are unable to protect our intellectual property rights, our competitive position could be harmed, or we could be required to incur significant expenses to enforce our rights.***

Our success depends to a significant degree upon the protection of our software and other proprietary technology rights. We rely on trade secret, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. We also regularly file patent applications to protect inventions arising from our research and development and have obtained a number of patents in the United States and other countries. There can be no assurance that our patent applications will be approved, that any issued patents will adequately protect our intellectual property, or that our patents will not be challenged by third parties. Also, much of our business and many of our solutions rely on key technologies developed or licensed by third or other parties and we may not be able to obtain or continue to obtain licenses and technologies from these third parties at all or on reasonable terms. The steps we have taken to protect our intellectual property may not prevent misappropriation of our proprietary rights or the reverse engineering of our solutions. Legal standards relating to the validity, enforceability and scope of protection of intellectual property rights in other countries are uncertain and may afford little or no effective protection of our proprietary technology. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could require costly efforts to protect our technology. Policing the unauthorized use of our products, trademarks and other proprietary rights is expensive, difficult and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. This type of litigation could result in substantial costs and diversion of management resources, either of which could materially harm our business. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property.

***Claims by others that we infringe their proprietary technology could harm our business.***

Third parties could claim that our current or future products or technology infringe their proprietary rights. We expect that software developers will increasingly be subject to infringement claims as the number of products and competitors providing software and services to the communications industry increases and overlaps occur. For example, in June 2018, Dropbox, Inc., a public company that provides cloud-based file sharing products, filed a patent infringement lawsuit against us in the United States District Court of Northern California, claiming three counts of patent infringement and seeking injunctive relief, among other remedies. We do not currently believe that this matter is likely to have a material adverse effect on our consolidated results of operation, cash flows, or our financial position, and we intend to vigorously defend this lawsuit, and believe we have valid defenses to the claims. Any claim of infringement by a third party, even those without merit, could cause us to incur substantial costs defending against the claim, and could distract our management from our business. Furthermore, a party making a claim of this nature, if successful, could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from offering our products or services. Any of these events could seriously harm our business.

We are generally obligated to indemnify our customers if our services infringe the proprietary rights of third parties and certain of our agreements with customers and partners include indemnification provisions under which we have agreed to indemnify the counter-party for losses suffered or incurred as a result of claims of intellectual property infringement and, in some cases, for financial and other damages caused by us to property or persons. Third parties may assert infringement claims against our customers or partners. These claims may require us to initiate or defend protracted and costly litigation on behalf of our customers or partners, regardless of the merits of these claims. If any of these claims succeed, we may be forced to pay damages on behalf of our customers or partners.

If anyone asserts a claim against us relating to proprietary technology or information, while we might seek to license their intellectual property, we might not be able to obtain a license on commercially reasonable terms or on any terms. In addition, any efforts to develop non-infringing technology could be unsuccessful. Our failure to obtain the necessary licenses or other rights or to develop non-infringing technology could prevent us from offering our services and could therefore seriously harm our business.

***We may seek to acquire companies or technologies, form joint ventures or make investments in other companies or technologies, which could disrupt our ongoing business, disrupt our management and employees, dilute our stockholders' ownership, increase our debt, and adversely affect our results of operations.***

We have made, and in the future intend to form joint ventures, make acquisitions of and investments in companies, technologies or products in existing, related or new markets for us that we believe may enhance our market position or strategic strengths. However, we cannot be sure that any acquisition or investment will ultimately enhance our products or strengthen our competitive position. Acquisitions involve numerous risks, including but not limited to:

- diversion of management's attention from other operational matters;
- inability to identify acquisition candidates on terms acceptable to us or at all, or inability to complete acquisitions as anticipated or at all;
- inability to realize anticipated benefits or commercialize purchased technologies;
- exposure to operational risks, rules and regulations to the extent such activities are located in countries where we have not historically done business;
- unknown, underestimated and/or undisclosed commitments or liabilities;
- incurrence of debt, contingent liabilities or future write-offs of intangible assets or goodwill;
- dilution of ownership of our current stockholders if we issue shares of our common stock;
- higher than expected transaction costs; and
- ineffective integration of operations, technologies, products or employees of the acquired companies.

In addition, acquisitions may disrupt our ongoing operations, increase our expenses and/or harm our results of operations or financial condition. Future acquisitions could also result in potentially dilutive issuances of equity securities, the incurrence of debt (which may reduce our cash available for operations and other uses), an increase in contingent liabilities or an increase in amortization expense related to identifiable assets acquired, each of which could materially harm our business, financial condition and results of operations.

***We make significant investments in new products and services that may not be profitable or align with our established company vision.***

We intend to continue to make investments to support our business growth, including expenditures to develop new services or enhance our existing services, enhance our operating infrastructure, market and sell our product offerings and acquire complementary businesses and technologies. These endeavors may involve significant risks and uncertainties, including failures to align new initiatives with our established corporate vision and direction, which could lead to a misapplication of our resources. These new investments are inherently risky and may involve distracting management from current operations, create greater than expected liabilities and expenses, provide us with an inadequate return on capital, include other unidentified risks and, ultimately, may generally not be successful. Further, our ability to effectively integrate new services and investments into our business may affect our profitability. Significant delays in new releases or significant problems in creating new products or services could adversely affect our revenue and financial performance.

***Interruptions or delays in our service due to problems with our third-party web hosting facilities or other third-party service providers could adversely affect our business.***

We rely on third parties for the maintenance of certain of the equipment running our solutions and software at geographically dispersed hosting facilities with third parties. If we are unable to renew, extend or replace our agreements with any of our third-party hosting facilities, we may be unable to arrange for replacement services at a similar cost and in a timely manner, which could cause an interruption in our service. We do not control the operation of these third-party facilities, each of which may be subject to damage or interruption from earthquakes, floods, fires, power loss, telecommunications failures or similar events. These facilities may also be subject to break-ins, sabotage, intentional acts of vandalism or similar misconduct. Despite precautions taken at these facilities, the occurrence of a natural disaster, cessation of operations by our third-party web hosting provider or a third party's decision to close a facility without adequate notice or other unanticipated problems at any facility could result in lengthy interruptions in our service. In addition, the failure by these facilities to provide our required data communications capacity could result in interruptions in our service.

***Our expansion into additional international markets may be subject to uncertainties that could increase our costs to comply with regulatory requirements in foreign jurisdictions, disrupt our operations and require increased focus from our management.***

Our growth strategy includes the growth of our operations in foreign jurisdictions. International operations and business expansion plans are subject to numerous additional risks, including economic and political risks in foreign jurisdictions in which we operate or seek to operate, potential additional costs due to localization and other geographic specific costs, difficulty in enforcing contracts and collecting receivables through some foreign legal and financial systems, unexpected changes in legal and regulatory requirements, differing technology standards and pace of adoption, fluctuations in currency exchange rates, varying regional and geopolitical business conditions and demands. The difficulties associated with managing a large organization spread throughout various countries and potential tax issues, including restrictions on repatriating earnings and multiple conflicting, changing and complex tax laws and regulations, and the differences in foreign laws and regulations, including foreign tax, data privacy requirements, anti-competition, intellectual property, labor, contract, trade and other laws. Additionally, compliance with international and U.S. laws and regulations that apply to our international operations may increase our cost of doing business in foreign jurisdictions. Violation of these laws and regulations could result in fines, criminal sanctions against us, our officers or our employees, or prohibitions on the conduct of our business. As we continue to expand our business globally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our international operations. However, any of these factors could adversely affect our international operations and, consequently, our operating results.

***Fluctuations in foreign currency exchange rates could result in foreign currency transaction losses, which could harm our operating results and financial condition.***

We consider the US dollar to be our functional currency. However, given our international operations we currently have, and expect to have in the future, revenue and expenses and related assets and liabilities denominated in foreign currencies. Foreign currency transaction exposure results primarily from transactions with customers or vendors denominated in currencies other than the functional currency of the entity in which we record the transaction. Any fluctuation in the exchange rate of these foreign currencies may positively or negatively affect our business, financial condition and operating results.

We face exposure to movements in foreign currency exchange rates due to the fact that we have non-U.S. dollar denominated revenue worldwide. Weakening of foreign currencies relative to the U.S. dollar adversely affects the U.S. dollar value of our foreign currency denominated revenue and positively affects the U.S. dollar value of our foreign currency denominated expenses. If foreign currencies were to weaken or strengthen relative to the U.S. dollar, we might elect to raise or lower our international pricing, which could potentially impact demand for our services. Alternatively, we might opt not to adjust our international pricing as a result of fluctuations in foreign currency exchange rates, which could potentially have a positive or negative impact on our results of operations and financial condition.

Similarly, our financial performance may be impacted by fluctuations in currency exchange rates when it comes to our non-U.S. dollar denominated expenses. The third-party vendors and suppliers to whom we owe payments for non-U.S. dollar denominated expenses may, or may not, decide to increase or decrease their pricing to reflect fluctuations in foreign currency exchange rates.

If there continues to be volatility in foreign currency exchange rates, we will continue to experience fluctuations in our operating results due to revaluing our assets and liabilities that are not denominated in the functional currency of the entity that recorded the asset or liability. Further, as foreign currency exchange rates change, the translation of our non-U.S. denominated revenue and expenses into U.S. dollars affects the year-over-year comparability of our operating results.

***We must recruit and retain our key management and other key personnel and our failure to recruit and retain qualified employees could have a negative impact on our business.***

We believe that our success depends in part on the continued contributions of our senior management and other key personnel to generate business and execute programs successfully. In addition, the relationships and reputation that these individuals have established and maintain with our customers and within the industries in which we operate contribute to our ability to maintain good relations with our customers and others within those industries. The loss of any members of senior management or other key personnel could materially impair our ability to identify and secure new contracts and otherwise effectively manage our business. In order to attract and retain executives and other key employees in a competitive marketplace, we must provide a competitive compensation package, including cash- and equity-based compensation. If we do not obtain the stockholder approval needed to continue granting equity compensation in a competitive manner, our ability to attract, retain, and motivate executives and key employees could be weakened. Further, in the technology industry, there is substantial and continuous competition for highly skilled business, product development, technical and other personnel. Competition for qualified personnel at times can be intense and as a result we may not be successful in attracting and retaining the personnel we require, which could have a material adverse effect on our ability to meet our commitments and new product delivery objectives. If we are unable to maintain or expand our direct sales capabilities, we may not be able to generate anticipated revenues. In addition, if we are unable to maintain or expand our product development capabilities, we may not be able to meet our product development goals.

Further, we rely on the expertise and experience of our senior management team. Although we have employment agreements with our executive officers, none of them or any of our other management personnel is obligated to remain employed by us. The loss of services of any key management personnel could lower productive output, interrupt our strategic vision and make it more difficult to pursue our business goals successfully.

***Our employee retention and hiring may be adversely impacted by immigration restrictions and related factors.***

Competition for skilled personnel is intense in our industry and any failure on our part to hire and retain appropriately skilled employees could harm our business. Our ability to hire and retain skilled employees is impacted, at least in part, by the fact that a portion of our professional workforce in the United States is comprised of foreign nationals who are not United States citizens. In order to be legally allowed to work for us, these individuals generally hold immigrant visas (which may or may not be tied to their employment with us) or green cards, the latter of which makes them permanent residents in the United States.

The ability of these foreign nationals to remain and work in the United States is impacted by a variety of laws and regulations, as well as the processing procedures of various government agencies. Changes in applicable laws, regulations or procedures could adversely affect our ability to hire or retain these skilled employees and could affect our costs of doing business and our ability to deliver services to our customers. In addition, if the laws, rules or procedures governing the ability of foreign nationals to work in the United States were to change or if the number of visas available for foreign nationals permitted to work in the United States were to be reduced, our business could be adversely affected, if, for example, we were unable to hire or no longer able to retain a skilled worker who is a foreign national.

Employing foreign nationals may require significant time and expense and our foreign national employees may choose to leave after we have made this investment. While a foreign national who is working under an immigrant visa tied to his or her employment by us may be less likely to choose to leave our Company than a similarly situated employee who is a United States national or a green card holder (as leaving our employ could mean also having to leave the United States), this may not always be the case. Additionally, many of our foreign national employees hold green cards, which means that they have greater flexibility to leave our Company without facing the risk of also having to leave the United States.

***Our use of “open source” software could negatively affect our ability to sell our services and subject us to possible litigation.***



A portion of the technologies licensed by us incorporates “open source” software, and we may incorporate open source software in the future. Open source software is generally licensed by its authors or other third parties under open source licenses. If we fail to comply with these licenses, we may be subject to certain conditions, including requirements that we offer any of our services that incorporate the open source software at no cost. Additionally, we may be required to make publicly available any source code for modifications or derivative works we create based upon, incorporating or using the open source software and/or license those modifications or alterations on terms that are unfavorable to us. If an author or other third party that distributes open source software were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, enjoined from selling those of our services that contained the open source software and required to comply with the foregoing conditions, which could disrupt the distribution and sale of some of our services.

In addition to risks related to license requirements, usage of open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide technology support, maintenance, warranties or assurance of title or controls on the origin of the software.

***Our inability to raise additional capital or generate the significant capital necessary to expand our operations and invest in new products could reduce our ability to compete and could harm our business.***

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 products and enhancements to our platforms 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 equity financing, our stockholders may experience significant dilution of their ownership interests and the per share value of our common stock could decline. In addition, the terms of any future issued equity securities could entitle the holders of those equity securities to rights, preferences and privileges superior to those of holders of our common stock. Furthermore, if we engage in debt financing, the holders of debt might have priority over the holders of common stock, and we may be required to accept terms that restrict our ability to incur additional indebtedness, including restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. We may also be required to take other actions that would otherwise be in the interests of the debt holders and force us to maintain specified liquidity or other ratios, any of which could harm our business, results of operations, and financial condition. If we need additional capital and cannot raise it on acceptable terms, we may not be able to, among other things:

- develop or enhance our products and platforms;
- acquire complementary technologies, products or businesses;
- expand operations, in the United States or internationally; or
- respond to competitive pressures or unanticipated working capital requirements.

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 limited.

***We continue to incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to new and ongoing compliance initiatives.***

We operate as a public company, and will continue to incur significant legal, accounting and other expenses as we comply with the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act” or “SOX”), the Dodd-Frank Wall Street Reform and Consumer Protection Act and other public company disclosure and corporate governance requirements, as well as any new rules that may subsequently be implemented by the Securities and Exchange Commission and/or Nasdaq, the exchange on which our common stock is listed (Nasdaq: SNCR). These rules impose various requirements on public companies, including requirements related to disclosures, corporate governance and internal controls. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time consuming and costly and place significant strain on our personnel, systems and resources.

Our management and other personnel will continue to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costlier. For example, we expect these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantial costs to maintain the same or similar coverage. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

***Changes in, or interpretations of, accounting principles could result in unfavorable accounting charges.***

We prepare our consolidated financial statements in conformity with U.S. generally accepted accounting principles (“GAAP”). These principles are subject to interpretation by the SEC and various bodies formed to interpret and create appropriate accounting principles. A change in these principles, or their interpretation, could have a significant effect on our reported results and may even retroactively affect previously reported results. Our accounting principles that recently have been or may be affected by changes in accounting principles are: (i) revenue recognition guidance; (ii) accounting for stock-based compensation; (iii) accounting for income taxes; (iv) accounting for business combinations and goodwill; and (v) accounting for foreign currency translation.

***Changes in, or interpretations of, tax rules and regulations, could adversely affect our effective tax rates.***

On December 22, 2017, President Trump signed into law the tax legislation commonly known as the “Tax Cuts and Jobs Act” (the “TCJA”) that significantly changes the U.S. Internal Revenue Code of 1986, as amended. Subsequent to TCJA, the U.S. Department of Treasury and Internal Revenue Service issued several complex proposed and final regulations, and related guidance, regarding provisions of the Tax Act. However, several aspects of the legislation remain unclear and subject to interpretation. While our current tax accounting is complete based on legislative updates relating to the U.S. TCJA, further interpretive guidance of the U.S. TCJA’s provisions could result in further adjustments that could have an impact on our future results of operations, cash flows or financial positions. Furthermore, states continue to issue guidance and enact legislation in response to the Tax Act, all of which could have an impact on our income tax expense, assets and liabilities.

Unanticipated changes in our tax rates could affect our future results of operations. Our future effective tax rates could be unfavorably affected by changes in tax laws or the interpretation of tax laws or by changes in the valuation of our deferred tax assets and liabilities. It is possible that future requirements, including the recently proposed implementation of International Financial Reporting Standards (“IFRS”) could change our current application of U.S. GAAP, resulting in a material adverse impact on our financial position or results of operations. In addition, we are subject to the continued examination of our income tax returns by the Internal Revenue Service (“IRS”), and other tax authorities. We regularly assess the likelihood of outcomes resulting from these examinations, if any, to determine the adequacy of our provision for income taxes. We believe our estimates to be reasonable, but there can be no assurance that the final determination of any of these examinations will not have an adverse effect on our operating results and financial position.

***If we are required to collect sales and use taxes on the services we sell in additional jurisdictions, we may be subject to liability for past sales and our future sales could decrease.***

We currently collect sales or use tax on our services in most states. Historically, with a few exceptions, we have not charged or collected value added tax on our services anywhere in the world. We may lose sales or incur significant expenses should tax authorities in other jurisdictions where we do business be successful in imposing sales and use taxes, value added taxes or similar taxes on the services we provide. A successful assertion by one or more tax authorities that we should collect sales or other taxes on the sale of our services could result in substantial tax liabilities for past sales, including interest and penalty charges, and could discourage customers from purchasing our services and otherwise harm our business. Further, we may conclude based on our own review that our services may be subject to sales and use taxes in other areas where we do business. Under these circumstances, we may voluntarily disclose our estimated liability to the respective tax authorities and initiate activities to collect taxes going forward.

It is not clear that our services are subject to sales and use tax in certain jurisdictions. States and certain municipalities in the United States, as well as countries outside the United States, have different rules and regulations governing sales and use taxes. These rules and regulations are subject to varying interpretations that may change over time and, in the future, our services may be subject to such taxes. Although our customer contracts typically provide that our customers are responsible for the payment of all taxes associated with the provision and use of our services, customers may decline to pay back taxes and may refuse responsibility for interest or penalties associated with those taxes. In certain cases, we may elect not to request customers to pay back taxes. If we are required to collect and pay back taxes and associated interest and penalties, and if our customers fail or refuse to reimburse us for all or a portion of these amounts, or if we elect not to seek payment of these amounts, we will incur unplanned expenses that may be substantial. Moreover, imposition of such taxes on our services going forward will effectively increase the cost of our services to our customers and may adversely affect our ability to retain existing customers or gain new customers in jurisdictions in which such taxes are imposed. Any of the foregoing could have a material adverse effect on our business, results of operation or financial condition.

## Risks Related to Our Common Stock

### ***Our stock price may continue to experience significant fluctuations and could subject us to litigation.***

Our stock price, like that of other technology companies, continues to fluctuate greatly. Our stock price, and demand for our stock, can be affected by many factors, such as unanticipated changes in management, quarterly increases or decreases in our earnings, speculation in the investment community about our financial condition or results of operations and changes in revenue or earnings estimates, announcement of new services, technological developments, alliances, or acquisitions by us. Additionally, the price of our common stock may continue to fluctuate greatly in the future due to factors that are non-company specific, such as the decline in the United States and/or international economies, acts of terror against the United States or other jurisdictions where we conduct business, war or due to a variety of company specific factors, including quarter to quarter variations in our operating results, shortfalls in revenue, gross margin or earnings from levels projected by securities analysts and the other factors discussed in these risk factors. In addition, if the market for technology stocks or the stock market in general experiences uneven investor confidence, the market price of our common stock could decline for reasons unrelated to our business, operating results or financial condition.

Fluctuation in market price and demand for our common stock may limit or prevent investors from readily selling their shares of common stock and may otherwise negatively affect the liquidity of our common stock. Causes of volatility in the market price of our stock could subject us to securities class action litigation. We are currently, and may in the future be, the subject of lawsuits that could require us to incur substantial costs defending against those lawsuits and divert the time and attention of our management.

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

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We currently have research coverage by securities and industry analysts, though we do not control these analysts and have no ability to ensure that they will continue to cover our common stock. If one or more of the analysts who covers us downgrades our stock or states a view that our business prospects are reduced, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to regularly publish reports on us, interest in the purchase of our stock could decrease, which could cause our stock price or trading volume, or both, to decline.

### ***The decline in the market price of our securities and the restatement of our previously issued financial results has resulted in private litigation that if results in judgments against us could have a material adverse impact on our results of operations and financial condition.***

We are subject to stockholder derivative litigation relating to certain of our previous public disclosures and may result in additional litigation. For additional discussion of this litigation, see Item 3. “Legal Proceedings” contained in this Form 10-K. Our management has been and may be required in the future to devote significant time and attention to this litigation, and this and any additional matters that arise could have a material adverse impact on our results of operations and financial condition as well as on our reputation. While we cannot estimate our potential exposure in these matters at this time, we have already incurred significant expense defending this litigation and expect to continue to need to incur significant expense in the defense. The existence of any litigation may have an adverse effect on our reputation with referral sources and our customers themselves, which could have an adverse effect on our results of operations and financial condition.

The outcome and amount of resources needed to respond to, defend or resolve lawsuits is unpredictable and may remain unknown for long periods of time. Our exposure under these matters may also include our indemnification obligations, to the extent we have any, to current and former officers and directors and, in some cases former underwriters, against losses incurred in connection with these matters, including reimbursement of legal fees and other expenses. Although we maintain insurance for claims of this nature, our insurance coverage does not apply in all circumstances and may be denied or insufficient to cover the costs related to the class action and stockholder derivative lawsuits. In addition, these matters or future lawsuits involving us may increase our insurance premiums, deductibles or co-insurance requirements or otherwise make it more difficult for us to maintain or obtain adequate insurance coverage on acceptable terms, if at all. Moreover, adverse publicity associated with negative developments in pending legal proceedings could decrease customer demand for our services. As a result, the pending lawsuits and any future lawsuits involving us, or our officers or directors, could have a material adverse effect on our business, reputation, financial condition, results of operations, liquidity and the trading price of our common stock.

***Other than payment of dividends on our Series A Preferred Stock, we have never paid dividends on our capital stock and we do not anticipate paying any dividends in the foreseeable future. Consequently, any gains from an investment in our common stock will likely depend on whether the price of our common stock increases.***

Other than the payment of dividends, either in-kind or in cash, on our Series A Preferred Stock in accordance with the Series A Certificate, we have not paid dividends on any of our classes of capital stock and we currently intend to retain our future earnings, if any, to fund the development and growth of our business, other than the payment of any dividends on our Series A Preferred Stock in accordance with the Series A Certificate. In addition, the terms of our current credit agreement and any future indebtedness that we may incur could preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be a shareholder's sole source of gain for the foreseeable future. Consequently, in the foreseeable future, a shareholder will likely only experience a gain from an investment in our common stock if the price of our common stock increases.

***Delaware law and provisions in our restated certificate of incorporation and amended and restated bylaws could make a merger, tender offer or proxy contest difficult, therefore depressing the trading price of our common stock.***

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change of control would be beneficial to our existing stockholders. In addition, our amended and restated certificate of incorporation and bylaws and credit agreements may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Our amended and restated certificate of incorporation and bylaws:

- authorize the issuance of "blank check" preferred stock that could be issued by our board of directors to thwart a takeover attempt;
- prohibit cumulative voting in the election of directors, which would otherwise allow holders of less than a majority of the stock to elect some directors;
- establish a classified board of directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following election;
- require that directors only be removed from office for cause;
- provide that vacancies on the board of directors, including newly created directorships, may be filled only by a majority vote of directors then in office;
- limit who may call special meetings of stockholders;
- prohibit stockholder action by written consent, requiring all actions to be taken at a meeting of the stockholders; and
- establish advance notice requirements for nominating candidates for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

The affirmative vote of the holders of at least two-thirds of the voting power of all of the then outstanding shares of our capital stock is generally necessary to amend or repeal the above provisions that are contained in our amended and restated certificate of incorporation. Also, absent approval of our board of directors, our amended and restated by-laws may only be amended or repealed by the affirmative vote of the holders of a majority of our shares of capital stock entitled to vote.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law, which limits business combination transactions with stockholders of 15% or more of our outstanding voting stock that our board of directors has not approved. These provisions and other similar provisions make it more difficult for stockholders or potential acquirers to acquire us without negotiation. These provisions may apply even if some stockholders may consider the transaction beneficial to them.

As a result, these provisions could limit the price that investors are willing to pay in the future for shares of our common stock. These provisions might also discourage a potential acquisition proposal or tender offer, even if the acquisition proposal or tender offer is at a premium over the then current market price for our common stock.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

We lease approximately 120,000 square feet of office space for our corporate headquarters in Bridgewater, New Jersey. We also lease approximately 38,000 square feet of office space in Phoenix, Arizona and 100,000 square foot facility in Bangalore,

India. In addition to the above office space, we lease offices in certain countries including Australia, Bulgaria, France, Ireland, Germany, England, Italy and Japan and in various states in the United States including Colorado and Virginia. Lease terms for our locations expire in the years between 2020 and 2029. We believe that the facilities we now lease are sufficient to meet our needs through at least the next twelve months. However, we may require additional office space after that time or if our current business plans change.

### **ITEM 3. LEGAL PROCEEDINGS**

For a discussion of our material pending legal proceedings that could impact our results of operations, financial condition or cash flows see *Note 19. Legal Matters* included in Part II, Item 8. “Notes to Consolidated Financial Statements” of this Annual Report on Form 10-K.

### **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**

As of December 31, 2019, our common stock was traded and listed on The Nasdaq Global Select Market under the symbol “SNCR.”

As of December 31, 2019, there were approximately 53 named holders of record of our common stock as according to our transfer agent. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by banks, brokers and other nominees. On December 31, 2019, the last reported sale price of our common stock as reported on The Nasdaq Global Select Market was \$4.75 per share.

#### **Dividend Policy**

##### **Common Stock**

We have never declared or paid cash dividends on our common equity. We do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our Board of Directors and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our Board of Directors may deem relevant. In addition, our ability to pay dividends is currently restricted by the terms of our Certificate of Designations of Series A Convertible Participating Perpetual Preferred Stock and our credit agreement with Citizens Bank, N.A. entered into in October 2019.

##### **Preferred Stock**

On February 15, 2018, the Company issued to Silver Private Holdings I, LLC (“Silver”), an affiliate of Siris Capital Group, LLC (“Siris”) 185,000 shares of our newly issued Series A Preferred Stock, par value \$0.0001 per share. Under the Series A Certificate, the holders of the Series A Preferred Stock are entitled to receive, on each share of Series A Preferred Stock on a quarterly basis, an amount equal to the dividend rate of 14.5% divided by four and multiplied by the then-applicable Liquidation Preference (as defined in the Series A Certificate) per share of Series A Preferred Stock (collectively, the “Preferred Dividends”). The Preferred Dividends are due on January 1, April 1, July 1 and October 1 of each year (each, a “Series A Dividend Payment Date”). The Company may choose to pay the Preferred Dividends in cash or in additional shares of Series A Preferred Stock. In the event we do not declare and pay a dividend in-kind or in cash on any Series A Dividend Payment Date, the unpaid amount of the Preferred Dividend will be added to the Liquidation Preference.

The Company declared and paid the following Preferred Dividends during the first three quarters and declared the following Preferred Dividends in the fourth quarter of fiscal year 2019:

- First Quarter - 7,075 shares of preferred dividends in the form of shares of Series A Preferred Stock
- Second Quarter - 7,332 shares of preferred dividends in the form of shares of Series A Preferred Stock

- Third Quarter - 7,598 shares of preferred dividends in the form of shares of Series A Preferred Stock
- Fourth Quarter - declared 7,873 shares of preferred dividends payable on January 1, 2020

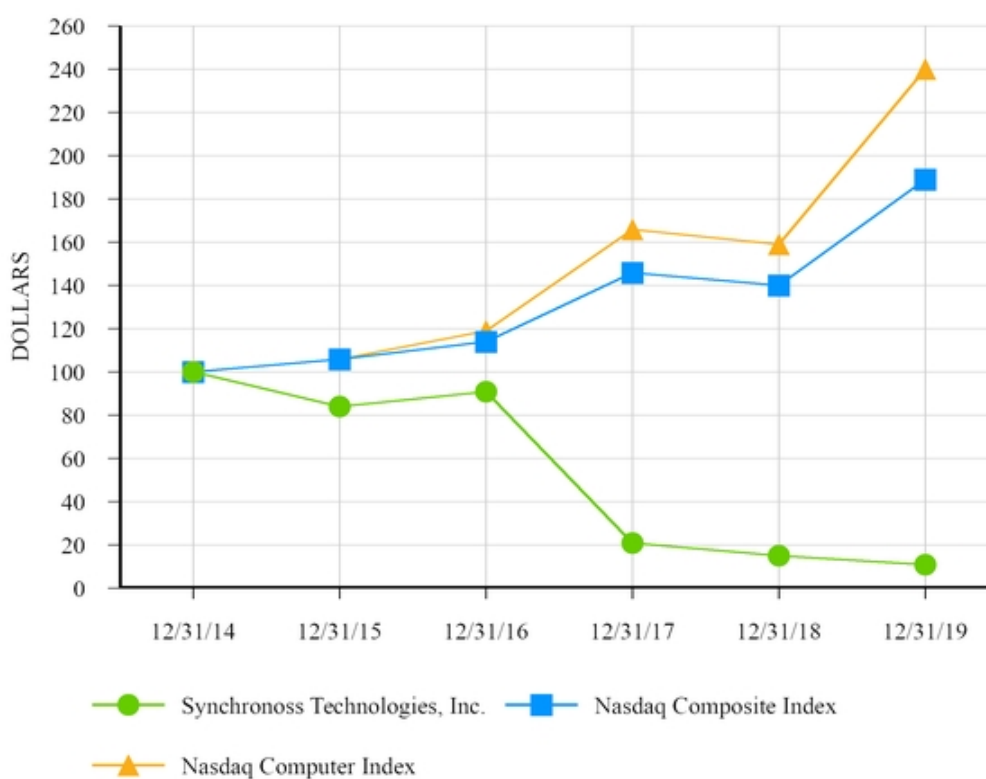
As of December 31, 2019, there were 217,186 shares of Series A Preferred Stock outstanding, including the 195,181 shares of Series A Preferred Stock outstanding as of December 31, 2018 and the issuance of 22,005 shares of Series A Preferred Stock as Preferred Dividends during the year ended December 31, 2019.

### Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on our common stock between December 31, 2014 and December 31, 2019, with the cumulative total return of (i) the Nasdaq Computer Index and (ii) the Nasdaq Composite Index, over the same period. This graph assumes the investment of \$100 on December 31, 2014 in our common stock, the Nasdaq Computer Index and the Nasdaq Composite Index, and assumes the reinvestment of dividends, if any. The graph assumes the initial value of our common stock on December 31, 2014 was the closing sales price of \$41.86 per share.

The comparisons shown in the graph below are based upon historical data. We caution that the stock price performance shown in the graph below is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock.

Information used in the graph was obtained from Nasdaq, a source believed to be reliable, but we are not responsible for any errors or omissions in such information.



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	<u>12/31/14</u>	<u>12/31/15</u>	<u>12/31/16</u>	<u>12/31/17</u>	<u>12/31/18</u>	<u>12/31/19</u>
Synchronoss Technologies, Inc.	\$100	\$84	\$91	\$21	\$15	\$11
Nasdaq Composite Index	\$100	\$106	\$114	\$146	\$140	\$189
Nasdaq Computer Index	\$100	\$106	\$119	\$166	\$159	\$240

**ITEM 6. SELECTED FINANCIAL DATA**

The following selected financial data should be read in conjunction with our consolidated financial statements and related notes and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and other financial data included elsewhere in this Form 10-K. The selected statements of operations and the selected balance sheet data are derived from our consolidated audited financial statements.

	Year Ended December 31,				
	2019	2018	2017	2016	2015
(In thousands, except per share data)					
<b>Statements of Operations Data:</b>					
Net revenues	\$ 308,749	\$ 325,839	\$ 402,361	\$ 426,294	\$ 372,561
Loss from continuing operations	(107,788)	(164,276)	(129,602)	(122,604)	(37,113)
Net loss from continuing operations	(103,467)	(245,280)	(194,224)	(93,869)	(37,782)
Net loss attributable to noncontrolling interests	1,126	(8,837)	(9,291)	(15,203)	(628)
Net loss from continuing operations attributable to Synchronoss	(136,727)	(262,036)	(184,933)	(78,666)	(37,154)
<b>Basic:</b>					
Continuing operations*	\$ (3.36)	\$ (6.51)	\$ (4.14)	\$ (1.81)	\$ (0.88)
<b>Diluted:</b>					
Continuing operations*	\$ (3.36)	\$ (6.51)	\$ (4.14)	\$ (1.81)	\$ (0.88)
<b>Weighted average common shares outstanding:</b>					
Basic	40,694	40,277	44,669	43,551	42,284
Diluted	40,694	40,277	44,669	43,551	42,284

\* Excludes Net loss attributable to redeemable noncontrolling interests and Preferred stock dividend

	As of December 31,				
	2019	2018	2017	2016	2015
(In thousands)					
<b>Balance Sheet Data:</b>					
Cash, cash equivalents, restricted cash and marketable securities	\$ 39,012	\$ 144,748	\$ 249,236	\$ 226,913	\$ 233,864
Working capital	(10,499)	50,690	178,493	186,488	265,975
Total assets	532,023	703,255	965,411	1,054,351	931,562
Contingent consideration obligation - long term	—	—	—	—	930
Lease financing obligation - long-term	—	9,494	11,183	12,450	13,391
Long-term convertible debt, net of debt issuance costs	—	—	227,704	226,291	224,878
Redeemable noncontrolling interest	12,500	12,500	25,280	25,280	25,280
Total stockholders’ equity	76,077	188,909	463,587	529,797	505,323



## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide a reader of our financial statements with a narrative from the perspective of our management on our financial condition, results of operations, liquidity and certain other factors that may affect our future results. The MD&A should be read in conjunction with the Financial Statements and Notes to the consolidated financial statements.*

### **Revenues**

We generate most of our revenues on a per transaction or subscription basis, which is derived from contracts that extend up to 60 months from execution.

The future success of our business depends on the continued growth of Business-to-Business and Business-to-Business-to-Consumer driving customer transactions, and continued expansion of our platforms into the TMT Market globally through Digital Transformation, Messaging, Cloud and Internet of Things ("IoT") markets. As such, the volume of transactions and our ability to expand our footprint in TMT and globally may result in revenue fluctuations on a quarterly basis.

Most of our revenues are recorded in U.S. dollars but as we continue to expand our footprint with international carriers, we will become subject to currency translation that could affect our future net sales as reported in U.S. dollars.

The Company's top five customers accounted for 69.2%, 69.0% and 73.0% of net revenues for the years ended December 31, 2019, 2018 and 2017, respectively. Contracts with these customers typically run for three to five years. Of these customers, Verizon accounted for more than 10% of the Company's revenues in 2019, 2018, and 2017. The loss of Verizon as a customer would have a material negative impact on our company. However, we believe that the costs incurred and subscriber disruption by Verizon to replace Synchronoss' solutions would be substantial.

### **Current Trends Affecting Our Results of Operations**

Business from our Synchronoss Personal Cloud solution has been driven by the growth in mobile devices globally that are becoming content rich. As these devices replace other traditional devices like PCs, the ability to securely back up content from mobile devices, sync it with other devices and share it with family, friends and business associates have become essential needs and subscriber expectations. Such devices include smartphones, connected cars, personal health and wellness devices and connected home devices. The need for the contents of these devices to be stored in a common cloud are also expected to be drivers of our business in the longer term.

Business from our traditional Synchronoss Messaging business (Email) has been driven by a resurgence in the need for white label secure messaging platforms that favor the Mobile Network Operator's ("MNO") business objectives and are not beholden to the objectives of a sponsoring over-the-top ("OTT") platform. We believe that messaging drives higher subscriber engagement than any other application in the market today and holds the potential to stimulate new revenue from traditional services and third-party brands. OTT global success has driven MNOs to look at opportunities to preempt and compete with the OTTs which has potential opportunity for Synchronoss' future growth to be driven by the need of TMT companies including (and especially) MNOs to embrace Messaging as a Platform ("MaaP"). MaaP will allow TMT and MNO's to converse with subscribers in an efficient, automated way by streamlining the costs and increasing the effectiveness of self-care, as well as yielding cross-sell upselling of service plans, devices, bundles, etc.. The Synchronoss Advanced Messaging Platform provides state of the art RCS-driven features including the ability to support advanced Peer to Peer communications and introduce new revenue streams driven by commerce and advertising via Application-to-Person capabilities.

Companies in the TMT market all face the dilemma of attempting to pivot their businesses to digital execution in order to create experiences that meet the expectations of their subscribers, generate new revenues and streamline costs creating healthier margins at a faster time to market than they have ever operated before. Their challenges feature the lack of skill sets to conceptualize and run day to day digital operations and the lack of resources to integrate their legacy back end systems to enact digital experiences that achieve their business objectives. The growth of Synchronoss Digital Platforms will be driven by the ability to provide TMT companies' desire to obtain digital transformation solutions as quickly as possible while educating them on the ability to operate a digital business efficiently. Our Platform as a Service ("PaaS") model provides a desirable alternative to heavy capital expenditure spending options often tried internally. The ability for our platforms to create low/no code, new customer digital journeys, virtually on the fly, gives TMT Companies the ability to operate new experiences and businesses without heavily investing in development resources.

Synchronoss Advanced Messaging, Cloud and Digital Platforms are poised to bring IoT initiatives to life across MNO and TMT companies creating new use cases that will help stimulate the commercial growth of the robust potential of the IoT market. As new devices and sensors come online in connected cities, Synchronoss, partnering with carriers like AT&T, has technology to unify and harness data from legacy systems; provide analytic insights that fuel automated communications, via our Advanced Messaging Platform between sensors, devices and people; and create a common storage reservoir with our secure Cloud. There is opportunity in many areas of the IoT ecosystem for Synchronoss to support utilizing our Activation, Cloud and Analytics tools.

To support our growth, which we expect to be driven by these favorable industry trends mentioned above, we will leverage modular components from our existing software platforms to build new products. We believe that these opportunities will continue to provide future benefits and position us for future revenue growth. We are also making investments in research and development of new products designed to enable us to grow rapidly in the mobile wireless market. Our purchase of capital assets and equipment may also increase based on aggressive deployment, subscriber growth and promotional offers for free or bundled storage by our major Tier 1 carrier customers.

We continue to expand our platforms into the converging TMT, MNO, Digital and IoT spaces to enable connected devices to do more things across multiple networks, brands and communities. Our initiatives with AT&T, Verizon, Sprint, British Telecom, Softbank and other CSPs continue to grow both with regard to our current business as well as our new product offerings. We are also exploring additional opportunities through merger and acquisition activities to support our customer, product and geographic diversification strategies.

## Discussion of the Consolidated Statements of Operations

The following table presents an overview of our results of operations for the years ended December 31, 2019, 2018 and 2017 (in thousands).

	Twelve Months Ended December 31,			2019 vs 2018	2018 vs 2017
	2019	2018	2017	\$ Change	\$ Change
Net revenues	\$ 308,749	\$ 325,839	\$ 402,361	\$ (17,090)	\$ (76,522)
Cost of revenues*	150,407	158,802	181,453	(8,395)	(22,651)
Research and development	75,568	79,172	90,850	(3,604)	(11,678)
Selling, general and administrative	112,771	122,112	154,037	(9,341)	(31,925)
Restructuring charges	755	12,375	10,739	(11,620)	1,636
Depreciation and amortization	77,036	117,654	94,884	(40,618)	22,770
Total costs and expenses	416,537	490,115	531,963	(73,578)	(41,848)
Loss from continuing operations	\$ (107,788)	\$ (164,276)	\$ (129,602)	\$ 56,488	\$ (34,674)

\* Cost of revenues excludes depreciation and amortization which are shown separately.

**Net revenues** decreased \$17.1 million to \$308.7 million for the year ended December 31, 2019, compared to the same period in 2018. The overall change is due to:

- a \$0.1 million increase in **Cloud** revenues due to a decrease in transaction revenue of \$3.4 million offset by an increase in subscription revenue of \$2.8 million and an increase in professional services revenue of \$0.7 million.
- a \$45.6 million decrease in **Digital Transformation** revenues is primarily driven by changes to the STIN business that led the Company to conclude that its collection of certain STIN receivables is no longer probable. In accordance with ASC 842, the portion of revenue that is no longer deemed collectible is reversed in the current period against revenue. Accordingly, the Company determined a contingency reserve is required, which was included as a reduction of revenue. The year over year change to STIN revenue was in excess of \$34.6 million. The remaining change is primarily driven by a decline in business activity.
- an increase in **Messaging** revenue of \$28.4 million primarily due to a growth in advanced messaging in North America as well as the continued delivery of an advanced messaging solution to a customer in the Japanese market.

**Net revenues** decreased \$76.5 million to \$325.8 million for the year ended December 31, 2018, compared to the same period in 2017. The overall change is due to:

- a \$68.7 million decrease in **Cloud** revenues due to:

- a change in the business model from a freemium pricing model to an active premium pricing model, resulting in a \$63.7 million decrease;
- a \$11.0 million reduction from a decline in business volume related to decisions to sunset certain non-strategic cloud customers; and
- a \$6.0 million increase as a result of the adoption of Topic 606.
- a \$17.7 million decrease in **Digital Transformation** revenues due to:
  - a decrease in transaction revenue of \$9.3 million resulting from a decline in business volume of \$8.3 million and the divestiture of the SpeechCycle business of \$1.0 million;
  - a decrease in subscription revenue of \$20.3 million resulting from a decline in business volume;
  - a decrease in professional services revenue of \$6.0 million;
  - a decrease in license revenue of \$3.0 million; and
  - a \$20.9 million increase as a result of the adoption of Topic 606.
- an increase in **Messaging** revenue of \$9.9 million primarily due to the delivery of an advanced messaging solution to a customer in the Japanese market, an uptick in business volume in our core messaging business and the adoption of Topic 606.

**Cost of revenues** decreased \$8.4 million to \$150.4 million for the year ended December 31, 2019, compared to the same period in 2018. The 2019 decrease was primarily due to cost savings initiatives implemented in 2018 and continuing into 2019. These initiatives resulted in a decrease in cost of revenues driven mainly by data center consolidation and operating expense savings.

Cost of revenues decreased \$22.7 million to \$158.8 million for the year ended December 31, 2018, compared to the same period in 2017. The 2018 decrease was primarily due to cost savings initiatives implemented in 2017 and 2018. These initiatives resulted in a \$16.8 million decrease in the use of outside consultants and a \$14.9 million reduction in telecommunication and facility costs driven primarily by lower hosting fees, partially offset by an increase in stock-based compensation for new employees in 2018 and increased operating costs related to the honeybee acquisition.

**Research and development** expense decreased \$3.6 million to \$75.6 million for the year ended December 31, 2019, compared to the same period in 2018. The decrease in 2019 is primarily due to the realization of our strategic efforts to reduce costs and refocus our resources on key strategic priorities. These efforts resulted in decreased personnel related costs including stock-based compensation expense.

Research and development expense decreased \$11.7 million to \$79.2 million for the year ended December 31, 2018, compared to the same period in 2017. The decrease in 2018 is primarily due to the realization of our strategic efforts that began in 2016 to reduce costs and refocus our resources on key strategic priorities resulting in the following: (i) \$3.5 million in decreased outside consulting fees and (ii) \$7.8 million in decreased personnel related costs including stock-based compensation expense.

**Selling, general and administrative** expense decreased \$9.3 million to \$112.8 million for the year ended December 31, 2019, compared to the same period in 2018. The 2019 decrease was primarily due to a net reduction in professional services and outside consulting fees incurred and lower telecommunication and facility costs offset by a right of use asset impairment of \$6.3 million.

Selling, general and administrative expense decreased \$31.9 million to \$122.1 million for the year ended December 31, 2018, compared to the same period in 2017. The 2018 decrease was primarily due to \$11.7 million in decreased merger and acquisition costs related to Intralinks in the prior year period as well a \$21.0 million net reduction in professional services and outside consulting fees, slightly offset by increased stock-based compensation expense for awards granted in 2017.

**Restructuring charges** were \$0.8 million, \$12.4 million and \$10.7 million for the years ended December 31, 2019, 2018 and 2017 respectively, which primarily related to employment termination costs as a result of the work-force reduction and facility consolidation plans initiated in connection with acquisition and divestiture activities. In the prior year, we commenced separate plans designed to reduce operating costs and align our resources with our key strategic priorities. Material cash outlays for restructuring typically occur in the quarter in which the plan is initiated or in the subsequent quarter.

**Depreciation and amortization** expense decreased \$40.6 million to \$77.0 million for the year ended December 31, 2019, compared to the same period in 2018. The 2019 decrease was primarily attributable to the expiration of amortizable acquired assets, a reduction in capital expenditures, and the one-time Zentry, LLC (“Zentry”) impairment charge in 2018. These changes were partially offset by the increased amortization of capitalized software.

Depreciation and amortization expense increased \$22.8 million to \$117.7 million for the year ended December 31, 2018, compared to the same period in 2017. The 2018 increase was primarily attributable to our decision to sunset certain product

offerings related to the Company's consolidated joint venture Zentry that resulted in (i) \$11.0 million write down of the intangible assets and (ii) \$9.1 million write down of goodwill. The remaining increase was primarily attributable to the expiration of amortizable acquired assets, offset by the increased amortization of capitalized software.

**Interest income** was \$1.3 million for the year ended December 31, 2019, compared to \$7.8 million for the same period in 2018. The 2019 decrease was primarily due to 2018 interest earned on a paid-in-kind purchase money note (the "PIK Note"), which the Company began deferring effective July 1, 2018 related to PIK Note.

Interest income was \$7.8 million for the year ended December 31, 2018 compared to \$12.5 million for the same period in 2017. The 2018 decrease was primarily due to lower interest earned on a paid-in-kind purchase money note (the "PIK Note") issued to the Company by Sequential Technology Holdings LLC balance compared to the respective prior year period. The Company began deferring interest income effective July 1, 2018 related to PIK Note.

**Interest expense** was \$1.4 million for the year ended December 31, 2019, compared to \$4.9 million for the same period in 2018. The 2019 decrease was primarily due to a decrease in our borrowings outstanding in 2019 after repayments of 2019 Notes and new lease standard (Topic 842) implementation for interest expense presentation which is now reflected in operating expense effective first quarter of 2019.

Interest expense was \$4.9 million for the year ended December 31, 2018, compared to \$55.8 million for the same period in 2017. The 2018 decrease was primarily due to a decrease in our borrowings outstanding in 2018 after the termination of our \$900 million senior secured term loan (the "2017 Term Facility") in the fourth quarter of 2017.

**Other expense, net** was \$7.4 million for the year ended December 31, 2019, compared to \$74.9 million the same period in 2018. The change was primarily due to the \$84.3 million write down of the PIK note in 2018, partially offset by \$5.5 million in income from the sale of intangible assets in 2019.

Other expense was \$74.9 million for the year ended December 31, 2018, compared to \$17.7 million for the same period in 2017. The 2018 increase was primarily due to the \$84.3 million write down of the PIK note, and other net income of \$4.5 million in legal settlements and \$3.8 million from the remeasurement of a mandatorily redeemable financial instrument, which expired in the first quarter.

**Equity method investment loss** changed \$27.0 million to a loss of \$1.6 million for the year ended December 31, 2019, compared to a loss of \$28.6 million for the same period in 2018. All equity method investment income (loss) are the result of our 30% equity interest in STIN and vary based on the financial results of the investment company during the respective reporting period.

Equity method investment income (loss) changed \$19.5 million to a loss of \$28.6 million for the year ended December 31, 2018, compared to a loss of \$9.1 million for the same period in 2017. All equity method investment income (loss) are the result of our 30% equity interest in STIN and vary based on the financial results of the investment company during the respective reporting period. In 2018, the Company determined that its investment in STIN was other-than-temporarily impaired due to the deteriorating financial position of the investee. As a result, the Company recorded a non-cash, other-than-temporary impairment of \$22.9 million. The remaining change in Equity method investment (losses) for 2018 and 2017 is attributable to our earnings (losses) pickup related to our investment in STIN.

**Income tax.** The Company recognized approximately \$2.2 million in related income tax provision and \$17.9 million in related income tax benefit during the year ended December 31, 2019 and 2018, respectively. The effective tax rate was approximately (2.1)% for the year ended December 31, 2019, which was lower than the U.S. federal statutory rate primarily due to pre-tax losses in jurisdictions where full valuation allowances have been recorded and in zero tax rate jurisdictions and permanent differences associated with U.S. Base Erosion and Anti Abuse Tax elections and by certain foreign jurisdictions projecting current income tax expense. The Company's effective tax rate was approximately 6.8% for the year ended December 31, 2018, which was lower than the U.S. federal statutory rate primarily due to the valuation allowance recorded in the fourth quarter of 2017 and the tax benefits recorded discretely in the third quarter of 2018 from the expiration of the statute of limitations for uncertain tax positions.

## Liquidity and Capital Resources

As of December 31, 2019, our principal sources of liquidity have been cash provided by operations and proceeds from divestitures. Our cash, cash equivalents, marketable securities and restricted cash balance was \$39.0 million at December 31, 2019. We anticipate that our principal uses of cash, cash equivalents, and marketable securities will be to fund the expansion of

our business through both organic growth and the expansion of our customer base. Uses of cash will also include facility and technology expansion, significant integration, capital expenditures, and working capital.

At December 31, 2019, our non-U.S. subsidiaries held approximately \$7.2 million of cash and cash equivalents that are available for use by all of our operations around the world. At this time, we believe the funds held by all non-U.S. subsidiaries will be permanently reinvested outside of the U.S. However, if these funds were repatriated to the U.S. or used for U.S. operations, certain amounts could be subject to U.S. tax for the incremental amount in excess of the foreign tax paid. Due to the timing and circumstances of repatriation of these earnings, if any, it is not practical to determine the unrecognized deferred tax liability related to the amount.

We believe that our existing cash, cash equivalents, marketable securities, credit facility, and our ability to manage working capital and expected positive cash flows generated from operations in combination with continued expense reductions will be sufficient to fund our operations for the next twelve months from the date of filing based on our current business plans. Our liquidity plans are subject to a number of risks and uncertainties, including those described in the "Forward-Looking Statements" section of this MD&A and Part I, Item 1A. "Risk Factors", some of which are outside of our control.

#### **Convertible Senior Notes**

The Company paid off the remaining carrying amount of the convertible senior notes on August 15, 2019. For further details, see *Note 10. Debt* of the Notes to Consolidated Financial Statements in Item 8 of this Form 10-K.

#### **2019 Credit Agreement**

On October 4, 2019, the Company entered into a Credit Agreement with Citizens Bank, N.A., for a \$10.0 million Revolving Credit Facility. Borrowings under the Revolving Credit Facility bear interest at a rate equal to, at the Company's option, either (1) the arithmetic average of the LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period (one, three or six months (or 12 months if agreed to by all applicable Lenders)) as selected by the Company relevant to such borrowing plus the applicable margin, or (2) a base rate determined by reference to the greatest of the federal funds rate plus 0.50%, the prime commercial lending rate as determined by the Agent, and the daily LIBOR rate plus 1.00%, in each case plus an applicable margin and subject to a floor of 0.00%. In addition, on a quarterly basis, the Company is required to pay each lender under the Revolving Credit Facility a 0.2% commitment fee in respect of commitments under the Revolving Credit Facility, which may be subject to adjustment based on the Company's total leverage ratio. The outstanding balance under the Revolving Credit Facility as of December 31, 2019 is zero.

#### **Share Repurchase Program**

There were no share repurchases in 2019.

#### **Shares of Preferred Stock**

In accordance with the terms of the Share Purchase Agreement dated as of October 17, 2017 (the "PIPE Purchase Agreement"), with Silver Private Holdings I, LLC, an affiliate of Siris ("Silver"), on February 15, 2018, we issued to Silver 185,000 shares of our newly issued Series A Preferred Stock, par value \$0.0001 per share, with an initial liquidation preference of \$1,000 per share, in exchange for \$97.7 million in cash and the transfer from Silver to us of the 5,994,667 shares of our common stock held by Silver (the "Preferred Transaction"). In connection with the issuance of the Series A Preferred Stock, we (i) filed the Series A Certificate and (ii) entered into an Investor Rights Agreement with Silver setting forth certain registration, governance and preemptive rights of Silver with respect to us (the "Investor Rights Agreement"). Pursuant to the PIPE Purchase Agreement, at the closing, we paid to Siris \$5.0 million as a reimbursement of Silver's reasonable costs and expenses incurred in connection with the Preferred Transaction.

Certificate of Designation of the Series A Preferred Stock

The rights, preferences, privileges, qualifications, restrictions and limitations of the shares of Series A Preferred Stock are set forth in the Series A Certificate. Under the Series A Certificate, the holders of the Series A Preferred Stock are entitled to receive Preferred Dividends. The Preferred Dividends are due on each Series A Dividend Payment Date. We may choose to pay the Preferred Dividends in cash or in additional shares of Series A Preferred Stock. In the event we do not declare and pay a dividend in-kind or in cash on any Series A Dividend Payment Date, the unpaid amount of the Preferred Dividend will be added to the Liquidation Preference. In addition, the Series A Preferred Stock participates in dividends declared and paid on shares of our common stock.

Each share of Series A Preferred Stock is convertible, at the option of the holder, into the number of shares of common stock equal to the "Conversion Price" (as that term is defined in the Series A Certificate) multiplied by the then applicable "Conversion Rate" (as that term is defined in the Series A Certificate). Each share of Series A Preferred Stock is initially convertible into 55.5556 shares of common stock, representing an initial "conversion price" of approximately \$18.00 per share of common stock. The Conversion Rate is subject to equitable proportionate adjustment in the event of stock splits, recapitalizations and other events set forth in the Series A Certificate.

On and after the fifth anniversary of February 15, 2018, holders of shares of Series A Preferred Stock have the right to cause the Company to redeem each share of Series A Preferred Stock for cash in an amount equal to the sum of the current liquidation preference and any accrued dividends. Each share of Series A Preferred Stock is also redeemable at the option of the holder upon the occurrence of a "Fundamental Change" (as that term is defined in the Series A Certificate) at a specified premium ("Liquidation Value"). In addition, the Company is also permitted to redeem all outstanding shares of the Series A Preferred Stock at any time (i) within the first 30 months of the date of issuance for the sum of the then-applicable Liquidation Preference, accrued but unpaid dividends and a make whole amount (known as "Redemption Value") and (ii) following the 30-month anniversary of the date of issuance for the sum of the then-applicable Liquidation Preference and the accrued but unpaid dividends. As of December 31, 2019, the Liquidation Value and Redemption Value of the Preferred Shares was \$243.1 million.

The holders of a majority of the Series A Preferred Stock, voting separately as a class, are entitled at each of our annual meetings of stockholders or at any special meeting called for the purpose of electing directors (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (i) to nominate and elect two members of our Board of Directors for so long as the Preferred Percentage (as defined in the Series A Certificate) is equal to or greater than 10%; and (ii) to nominate and elect one member of our Board of Directors for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%.

For so long as the holders of shares of Series A Preferred Stock have the right to nominate at least one director, we are required to obtain the prior approval of Silver prior to taking certain actions, including: (i) certain dividends, repayments and redemptions; (ii) any amendment to our certificate of incorporation that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock; (iii) issuances of stock ranking senior or equivalent to shares of Series A Preferred Stock (including additional shares of Series A Preferred Stock) in the priority of payment of dividends or in the distribution of assets upon any liquidation, dissolution or winding up of us; (iv) changes in the size of our Board of Directors; (v) any amendment, alteration, modification or repeal of the charter of our Nominating and Corporate Governance Committee of the Board of Directors and related documents; and (vi) any change in our principal business or the entry into any line of business outside of our existing lines of businesses. In addition, in the event that we are in EBITDA Non-Compliance (as defined in the Series A Certificate) or the undertaking of certain actions would result in us exceeding a specified pro forma leverage ratio, then the prior approval of Silver would be required to incur indebtedness (or alter any debt document) in excess of \$10.0 million, enter or consummate any transaction where the fair market value exceeds \$5.0 million individually or \$10.0 million in the aggregate in a fiscal year or authorize or commit to capital expenditures in excess of \$25.0 million in a fiscal year.

Each holder of Series A Preferred Stock has one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent. The holders of Series A Preferred Stock are permitted to take any action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or electronic transmission of the holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders. In addition to any vote (or action taken by written consent) of the holders of the shares of Series A Preferred Stock as a separate class provided for in the Series A Certificate or by the General Corporation Law of the State of Delaware, the holders of shares of the Series A Preferred Stock are entitled to vote with the holders of shares of common stock (and any other class or series that may similarly be entitled to vote on an as-converted basis with the holders of common stock) on all matters submitted to a vote or to the consent of the stockholders of the Company (including the election of directors) as one class.

Under the Series A Certificate, if Silver and certain of its affiliates have elected to effect a conversion of some or all of their shares of Series A Preferred Stock and if the sum, without duplication, of (i) the aggregate number of shares of our common stock issued to such holders upon such conversion and any shares of our common stock previously issued to such holders upon conversion of Series A Preferred Stock and then held by such holders, plus (ii) the number of shares of our common stock underlying shares of Series A Preferred Stock that would be held at such time by such holders (after giving effect to such conversion), would exceed the 19.9% of the issued and outstanding shares of our voting stock on an as converted basis (the "Conversion Cap"), then such holders would only be entitled to convert such number of shares as would result in the sum of clauses (i) and (ii) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to any such limitation on conversion). Any shares of Series A Preferred Stock which a holder has elected to convert but which, by reason of the previous sentence, are not so converted, will be treated as if the holder had not made such election to convert and such shares of Series A Preferred Stock will remain outstanding. Also, under the Series A Certificate, if the sum, without duplication, of (i) the aggregate voting power of the shares previously issued to Silver and certain of its affiliates held by such holders at the record date, plus (ii) the aggregate voting power of the shares of Series A Preferred Stock held by such holders as of such record date, would exceed 19.99% of the total voting power of our outstanding voting stock at such record date, then, with respect to such shares, Silver and certain of its affiliates are only entitled to cast a number of votes equal to 19.99% of such total voting power. The limitation on conversion and voting ceases to apply upon receipt of the requisite approval of holders of our common stock under the applicable listing standards.

#### Investor Rights Agreement

Concurrently with the closing of the Preferred Transaction, Synchronoss and Silver entered into an Investor Rights Agreement. Under the terms of the Investor Rights Agreement, Silver and Synchronoss have agreed that, effective as of the closing of the Preferred Transaction, the Board of Directors of Synchronoss will consist of ten members. From and after the closing of the Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate a member to the Board of Directors pursuant to the Series A Certificate, the Board of Directors of Synchronoss will consist of (i) two directors nominated and elected by the holders of shares of Series A Preferred Stock; (ii) four directors who meet the independence criteria set forth in the applicable listing standards (each of whom will be initially agreed upon by Synchronoss and Silver); and (iii) four other directors, two of whom shall satisfy the independence criteria of the applicable listing standards and, as of the closing of the Preferred Transaction, one of whom shall be the individual then serving as chief executive officer of Synchronoss and one of whom shall be the current chairman of the Board of Directors of Synchronoss as of the date of execution of the Investors Rights Agreement. Following the closing of the Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate at least one director to the Board of Directors of Synchronoss pursuant to the Series A Certificate, Silver will have the right to designate two members of the Nominating and Corporate Governance Committee of the Board of Directors.

Pursuant to the terms of the Investor Rights Agreement, neither Silver nor its affiliates may transfer any shares of Series A Preferred Stock subject to certain exceptions (including transfers to affiliates that agree to be bound by the terms of the Investor Rights Agreement).

For so long as Silver has the right to appoint a director to the Board of Directors of Synchronoss, without the prior approval by a majority of directors voting who are not appointed by the holders of shares of Series A Preferred Stock, neither Silver nor its affiliates will directly or indirectly purchase or acquire any debt or equity securities of Synchronoss (including equity-linked derivative securities) if such purchase or acquisition would result in Silver's Standstill Percentage (as defined in the Investor Rights Agreement) being in excess of 30%. However, the foregoing standstill restrictions would not prohibit the purchase of shares pursuant to the PIPE Purchase Agreement or the receipt of shares of Series A Preferred Stock issued as Preferred Dividends pursuant to the Series A Certificate, shares of Common Stock received upon conversion of shares of Series A Preferred Stock or receipt of any shares of Series A Preferred Stock, Common Stock or other securities of the Company otherwise paid as dividends or as an increase of the Liquidation Preference (as defined in the Series A Certificate) or distributions thereon. Silver will also have preemptive rights with respect to issuances of securities of Synchronoss in order to maintain its ownership percentage.

Under the terms of the Investor Rights Agreement, Silver will be entitled to (i) three demand registrations, with no more than two demand registrations in any single calendar year and provided that each demand registration must include at least 10% of the shares of Common Stock held by Silver, including shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock and (ii) unlimited piggyback registration rights with respect to primary issuances and all other issuances.

**Discussion of Cash Flows**

A summary of net cash flows follows (in thousands):

	Twelve Months Ended December 31,			Change	Change
	2019	2018	2017	2019 vs 2018	2018 vs 2017
Net cash provided by (used in):					
Operating activities	\$ 32,583	\$ (31,369)	\$ (18,248)	\$ 63,952	\$ (13,121)
Investing activities	19,377	(67,282)	98,245	86,659	(165,527)
Financing activities	(121,257)	(35,885)	(35,664)	(85,372)	(221)

Our primary source of cash is receipts from revenue. The primary uses of cash are personnel and related costs, telecommunications and facility costs related primarily to our cost of revenue and general operating expenses including professional service fees, consulting fees, building and equipment maintenance and marketing expense.

**Cash flows from operating activities** for the year ended December 31, 2019 was a \$32.6 million of cash provided by operating activities, as compared to \$31.4 million of cash used for operating activities for the same period in 2018. The increase of cash provided by operating activities of \$64.0 million was primarily due to favorable changes in cash earnings of \$16.1 million, a \$20.7 million tax refund and a favorable change in working capital of \$27.1 million.

Cash flows from operating activities for the year ended December 31, 2018 was a \$31.4 million use of cash, as compared to \$18.2 million of cash used by operating activities for the same period in 2017. The increase of cash used in operating activities of \$13.1 million was primarily due to favorable changes in cash earnings of \$12.2 million and an unfavorable change in working capital of \$25.3 million.

**Cash flows from investing activities** for the year ended December 31, 2019 was \$19.4 million of cash provided by investing activities, as compared to \$67.3 million in cash used for investing activities during the same period in 2018. The 2019 cash provided from investing activities was driven by the sale of marketable securities offset by our continued investment in capitalized software. The increased spend in 2018 was due primarily to purchase marketable securities and fund the honeybee acquisition.

Cash flows from investing activities for the year ended December 31, 2018 was a use of cash of \$67.3 million, as compared to \$98.2 million in cash provided by investing activities during the same period in 2017. The decrease of \$165.5 million in cash in investing activities was due primarily to (i) cash provided by the divestiture of Intralinks and SpeechCycle in 2017 and (ii) cash used for purchases of marketable securities and the acquisition of Honeybee in 2018.

**Cash flows from financing activities** for the year ended December 31, 2019 was \$121.3 million use of cash, as compared to \$35.9 million of cash used by financing activities for the same period in 2018. The cash used for financing activities was mainly attributable to the repayment of the convertible debt in August 2019. The 2019 increase in cash used for financing of \$85.4 million was primarily driven by the \$86.2 million of proceeds for the issuance of preferred stock in 2018.

Cash flows from financing activities for year ended December 31, 2018 was \$35.9 million, as compared to \$35.7 million of cash used by financing activities for the same period in 2017. The cash used by financing for 2018 was primarily driven by the \$113.7 million partial repayment of the convertible debt offset by \$86.2 million of proceeds for the issuance of preferred stock.

**Effect of Inflation**

Although inflation generally affects us by increasing our cost of labor and equipment, we do not believe that inflation has had any material effect on our results of operations during 2019, 2018 and 2017. We do not expect the current rate of inflation to have a material impact on our business.



**Contractual Obligations**

Our contractual obligations consist of contingent consideration, operating leases or long-term agreements for office space, automobiles, office equipment and colocation services and contractual commitments under third-party hosting, software licenses and maintenance agreements. The following table summarizes our long-term contractual obligations as of December 31, 2019 (in thousands).

	Payments Due by Period				
	Total	2020	2021-2023	2024-2025	Thereafter
Operating lease obligations	\$ 93,075	\$ 13,639	\$ 35,302	\$ 19,806	\$ 24,328
Purchase obligations*	30,977	25,275	5,702	—	—
Total	\$ 124,052	\$ 38,914	\$ 41,004	\$ 19,806	\$ 24,328

\* Amount represents obligations associated with colocation agreements and other customer delivery related purchase obligations.

**Uncertain Tax Positions**

Unrecognized tax positions are \$3.3 million at December 31, 2019. We are not able to reasonably estimate when we would make any cash payments required to settle these liabilities, but we do not believe that the ultimate settlement of our obligations will materially affect our liquidity. We do not expect that the balance of unrecognized tax benefits will significantly increase or decrease over the next twelve months.

**Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements in accordance with U.S. GAAP requires us to utilize accounting policies and make certain estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingencies as of the date of the financial statements and the reported amounts of revenues and expenses during a fiscal period. The SEC considers an accounting policy to be critical if it is important to a company's financial condition and results of operations, and if it requires significant judgment and estimates on the part of management in its application. We have discussed the selection and development of the critical accounting policies with the Audit Committee, and the Audit Committee has reviewed our related disclosures in this Form 10-K. Although we believe that our judgments and estimates are appropriate, correct and reasonable under the circumstances, actual results may differ from those estimates. If actual results or events differ materially from those contemplated by us in making these estimates, our reported financial condition and results of operations for future periods could be materially affected. See Part I, "Item 1A. Risk Factors" in this Form 10-K for certain matters bearing risks on our future results of operations.

We believe the following to be our critical accounting policies because they are important to the portrayal of our consolidated financial condition and results of operations and they require critical management judgments and estimates about matters that are uncertain.

During the year ended December 31, 2019, the Company made significant changes in its accounting policies over leases, to align with the adoption of Topic 842. These updates are described in detail in *Note 2. Summary of Significant Accounting Policies*. Aside from the adoption of Topic 842, there were no significant changes in our critical accounting policies and estimates discussed in our Form 10-K during the year ended December 31, 2019.

**Revenue Recognition and Deferred Revenue**

The Company's accounting policies over revenue recognition are described below and in detail in *Note 2. Summary of Significant Accounting Policies*.

The Company generates revenue from the delivery of a range of products, solutions and services for operators, enterprises, OEMs and technology providers. We offer services principally on a Transactional or Subscription basis (SaaS) or in the form of Professional Services or Software Licenses. Revenues are recognized when control of the promised goods or services are transferred to the Company's customers, in an amount that reflects the consideration that the Company expects to receive in exchange for those goods or services. The Company generates all of its revenue from contracts with customers.

Subscription and Transaction revenues consist of revenues derived from the processing of transactions through the Company's service platforms, providing enterprise portal management services on a subscription basis and maintenance agreements on software licenses. The Company generates revenue from Subscription services from monthly active user fees, software as a service ("SaaS") fees, hosting and storage fees, and fees for the related maintenance support for those services. In most cases, the subscription or transaction arrangement is a single performance obligation comprised of a series of distinct services that are substantially the same and that have the same pattern of transfer (i.e., distinct days of service). The Company applies a measure of progress (typically time-based) to any fixed consideration and allocates variable consideration to the distinct periods of service based on usage, under Topic 606 Section 10-25-14(b). When the Company does not allocate variable consideration to distinct periods of service, the total estimated transaction price is recognized ratably over the term of the contract, where the level of service provided to the customer does not vary significantly from one period to another.

Transaction service arrangements include services such as processing equipment orders, new account set-up and activation, number port requests, credit checks and inventory management. Transaction revenues are principally based on a contractual price per transaction and are recognized based on the number of transactions processed during each reporting period. Revenues are recorded based on the total number of transactions processed at the applicable price established in the relevant contract.

Many of the Company's contracts guarantee minimum volume transactions from the customer. In these instances, if the customer's total estimated transaction volume for the period is expected to be less than the contractual amount, the Company records revenues at the minimum guaranteed amount on a straight line based over the period covered by the minimum. Set-up fees for transactional service arrangements are deferred until set up activities are completed and recognized on a straight-line basis over remaining expected customer relationship period. Revenues are presented net of discounts, which are volume level driven.

In accordance with Topic 606 Section 10-50-20, any credits due to customers, which are generally performance driven and based upon system availability or response times to incidents, are determined and accounted for in the period in which the services are provided. The Company recognizes revenues from support and maintenance performance obligations over the service delivery period.

The Company's software licenses typically provide for a perpetual or term right to use the Company's software. The Company has concluded that in most cases its software license is distinct as the customer can benefit from the software on its own. Software revenue is typically recognized when the software is delivered to the customer. Contracts that include software customization or specified upgrades may result in the combination of the customization services with the software license as one performance obligation. The Company does not have a history of returns, or refunds of its software licenses, however, in limited instances, the Company may constrain consideration to high-risk customers, until collection is resolved.

The Company's professional services include software development and customization. The contracts generally include project deliverables specified by each customer. The performance obligations in the agreements are generally combined into one deliverable and generally result in the transfer of control over time. The underlying deliverable is owned and controlled by the customer and does not create an asset with an alternative use to us. The Company recognizes revenue on fixed fee contracts on the proportion of labor hours expended to the total hours expected to complete the contract performance obligation.

Most of the Company's contracts with customers contain multiple performance obligations which generally include either 1) a perpetual software license with support and maintenance and sometimes a hosting agreement or 2) a term SaaS agreement, in many cases these are sold along with professional services. For these contracts, the Company accounts for individual goods and services separately if they are distinct performance obligations. This often requires significant judgment based upon knowledge of the products, the solution provided and the structure of the sales contract. In SaaS agreements, the Company provides a service to the customer which combines the software functionality, maintenance and hosting into a single performance obligation when the customer doesn't have the ability to take possession of the underlying software license. The Company may also sell the same three goods and services in a contract, but there may be three performance obligations, where the customer has the right to take possession of the software license without significant penalty.

The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. The Company estimates standalone selling prices of software based on observable inputs of past transactions to similarly situated customers. When such observable data is not available for certain software licenses because there is a limited number of transactions or prices are highly variable, the Company will estimate the standalone selling price using the residual approach. Standalone selling prices of services are typically determined based on observable transactions when these services are sold on a standalone basis to similarly situated customers or estimated using a cost-plus margin approach.

Estimating the transaction price of variable consideration including the variable quantity subscription or transaction contracts in a multiple performance obligation arrangement requires significant judgment. The Company generally estimates this variable

consideration at the most likely amount to which the Company expects to be entitled and in certain cases based on the expected value. The Company includes estimated amounts in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved. The Company's estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Company's anticipated performance and all information (historical, current and forecasted) that is reasonably available to us. The Company reviews and updates these estimates on a quarterly basis.

### **Allowance for Doubtful Accounts**

We maintain an allowance for doubtful accounts for estimated bad debts resulting from the inability of our customers to make required payments. The amount of the allowance account is based on historical experience and our analysis of the accounts receivable balance outstanding. While credit losses have historically been within our expectations and the provisions established, we cannot guarantee that we will continue to experience the same credit losses that we have in the past or that our reserves will be adequate. If the financial condition of one of our customers were to deteriorate, resulting in its inability to make payments, additional allowances may be required which would result in an additional expense in the period that this determination was made.

### **Allowance for Loan Losses**

The Company's allowance for credit losses relates to the related party note receivable and is based on the probable estimated losses that may be incurred. The allowance is based on two basic principles of accounting: (1) ASC Topic 450, "Accounting for Contingencies", which requires that losses be accrued when they are probable of occurring and estimable, and (2) ASC Topic 310, "Accounting by Creditors for Impairment of a Loan", which requires that losses be accrued based on the differences between the value of collateral and the present value of future cash flows.

The allowance for loan losses is established to estimate losses that may occur by recording a provision for loan losses that is charged to earnings in the period known. The allowance is evaluated by management taking into consideration adverse situations that may affect the borrower's ability to repay and the estimated value of any underlying collateral. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available. Measured impairment and credit losses are charged against the allowance when management believes to the extent amounts are not collectible.

### **Stock-Based Compensation**

As of December 31, 2019, we maintain eight stock-based compensation plans. We utilize the Black-Scholes pricing model to determine the fair value of stock options on the dates of grant. Restricted stock awards are measured based on the fair market values of the underlying stock on the dates of grant. We recognize stock-based compensation over the requisite service period with an offsetting credit to additional paid-in capital.

For our performance restricted stock awards, we estimate the number of shares the recipient is to receive by applying a probability of achieving the performance goals. The actual number of shares the recipient receives is determined at the end of the performance period based on the results achieved versus goals based on our performance targets, such as revenue and EBITDA. Once the number of awards is determined, the compensation cost is fixed and continues to be recognized using straight line recognition over the requisite service period for each vesting tranche.

During 2017, our Board approved the issuance of performance-based restricted stock to certain executives which are eligible to vest if the volume-weighted average closing price over 20 consecutive trading days equals or exceeds certain stock prices during the specific performance period from July 2017 to July 2019. We utilized the Monte Carlo simulation to estimate the fair value of the restricted stock on its grant date.

Use of a valuation model requires management to make certain assumptions with respect to selected model inputs. Expected volatility was calculated based on our historical information of our stock. The average expected life was determined using historical stock option exercise activity. The risk-free interest rate is based on U.S. Treasury zero-coupon issues with a remaining term equal to the expected life assumed at the date of grant. We have never declared or paid cash dividends on our common equity and do not anticipate paying any cash dividends in the foreseeable future. Forfeitures are accounted for as they occur.

### **Income Taxes**

On December 22, 2017, the U.S. government enacted the Tax Cuts and Jobs Act ("TCJA"). The TCJA made changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among others, that are generally be effective for taxable years after December 31, 2017. While our accounting for the recorded impact of the TCJA is deemed to be complete as

of December 31, 2019, these amounts are based on prevailing regulations and currently available information, and any additional guidance issued by the Internal Revenue Service (IRS) could impact our recorded amounts in future periods. In 2019, the impact of the TCJA was minor due to the losses incurred and the valuation allowance position.

Since we conduct operations on a global basis, our effective tax rate has and will depend upon the geographic distribution of our pre-tax earnings among locations with varying tax rates. We account for the effects of income taxes that result from our activities during the current and preceding years. Under this method, deferred income tax liabilities and assets are based on the difference between the financial statement carrying amounts and the tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse or be utilized. The realization of deferred tax assets is contingent upon the generation of future taxable income. A valuation allowance is recorded if it is “more likely than not” that a portion or all of a deferred tax asset will not be realized.

In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. In projecting future taxable income, we begin with historical results and incorporate assumptions including the amount of future state, federal and foreign pretax operating income, the reversal of temporary differences, and the implementation of feasible and prudent tax-planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates we are using to manage the underlying businesses.

We recognize a tax benefit from an uncertain tax position only if it is more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is measured by determining the amount that has a greater than 50 percent likelihood of being realized upon the settlement of the position. Components of the reserve are classified as current or a long-term liability in the Consolidated Balance Sheets based on when we expect each of the items to be settled. We record interest and penalties accrued in relation to uncertain tax benefits as a component of interest expense.

While we believe we have identified all reasonably identifiable exposures and that the reserve we have established for identifiable exposures is appropriate under the circumstances, it is possible that additional exposures exist and that exposures may be settled at amounts different than the amounts reserved. It is also possible that changes in facts and circumstances could cause us to either materially increase or reduce the carrying amount of our tax reserves. In general, tax returns for the year 2016 and thereafter are subject to future examination by tax authorities.

Our policy has been to leave our cumulative unremitted foreign earnings invested indefinitely outside the United States, and we intend to continue this policy. Although the transition tax in the TCJA has removed U.S. federal taxes on distributions to the U.S. on a go forward basis, the Company continues to assert permanent reinvestment of foreign earnings. Due to the timing and circumstances of repatriation of such earnings, if any, it is not practicable to determine the unrecognized deferred tax liability relating to such amounts.

## **Business Combinations**

We account for business combinations in accordance with the acquisition method. The acquisition method of accounting requires that assets acquired, and liabilities assumed and any noncontrolling interest in the acquiree (if any), be recorded at their fair values on the date of a business acquisition. Our consolidated financial statements and results of operations reflect an acquired business from the completion date of the transaction.

The judgments that we make in determining the estimated fair value assigned to each class of assets acquired and liabilities assumed, as well as asset lives, can materially impact net income in periods following a business combination. We generally use either the income, cost or market approach to aid in our conclusions of such fair values and asset lives. The income approach presumes that the value of an asset can be estimated by the net economic benefit to be received over the life of the asset, discounted to present value. The cost approach presumes that an investor would pay no more for an asset than its replacement or reproduction cost. The market approach estimates value based on what other participants in the market have paid for reasonably similar assets. Although each valuation approach is considered in valuing the assets acquired, the approach ultimately selected is based on the characteristics of the asset and the availability of information.

We record contingent consideration resulting from a business combination at its fair value on the acquisition date. Each reporting period thereafter, we revalue these obligations and record increases or decreases in their fair value as an adjustment to net change in contingent consideration obligation within the Consolidated Statements of Operations. Changes in the fair value of the contingent consideration obligation can result from updates in the achievement of financial or other operational targets and changes to the weighted probability of achieving those future targets. Significant judgment is employed in determining the

appropriateness of these assumptions as of the acquisition date and for each subsequent period. Accordingly, any change in the assumptions described above, could have a material impact on the amount of the net change in contingent consideration obligation that we record in any given period.

## **Discontinued Operations**

Management classifies a disposal transaction as discontinued operation in the consolidated financial statements when it qualifies as a component of the Company, meets the held for sale criteria, is disposed of by sale, or is disposed of other than by sale and it represents a strategic shift that has a major effect on our operations and financial results. Insignificant and non-strategic shifting divestitures are not classified as within discontinued operations.

## **Investments in Affiliates and Other Entities**

In the normal course of business, we enter into various types of investment arrangements, each having unique terms and conditions. These investments may include equity interests held by us in business entities, including general or limited partnerships, contractual ventures, or other forms of equity participation. Management determines whether such investments involve a variable interest entity (“VIE”) based on the characteristics of the subject entity. If the entity is determined to be a VIE, then management determines if we are the primary beneficiary of the entity and whether consolidation of the VIE is required. The primary beneficiary consolidating the VIE must normally have both (i) the power to direct the activities of a VIE that most significantly affect the VIE’s economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE, in either case that could potentially be significant to the VIE. When we are deemed to be the primary beneficiary, the VIE is consolidated and the other party’s equity interest in the VIE is accounted for as a noncontrolling interest.

We generally account for investments that we make in VIEs in which we have determined that we do not have a controlling financial interest but have significant influence over and hold at least a 20% ownership interest using the equity method. Any such investment not meeting the parameters to be accounted under the equity method would be accounted for using the cost method unless the investment had a readily determinable fair value, at which it would then be reported.

If an entity fails to meet the characteristics of a VIE, management then evaluates such entity under the voting model. Under the voting model, we would consolidate the entity if it is determined that we, directly or indirectly, have greater than 50% of the voting shares, and determine that other equity holders do not have substantive participating rights.

## **Goodwill**

Goodwill represents the excess of the purchase price over the fair value of assets acquired, including other definite-lived intangible assets. Our policy is to perform an impairment test of goodwill at least annually, and more frequently if events or circumstances occurred that would indicate a reduced fair value in our reporting units could exist. Typically, we perform a qualitative assessment in the fourth quarter of the fiscal year to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying value. As part of this qualitative assessment, we perform a quantitative assessment where necessary in substantiating our qualitative assessment.

During our qualitative assessment we make significant estimates, assumptions, and judgments, around the financial performance of the Company, changes in our share price, and forecasts of earnings, working capital requirements, and cash flows. We consider each reporting unit’s historical results and operating trends as well as any strategic difference from our historical results when determining these assumptions.

If we determine that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill, we perform a quantitative goodwill impairment test. Fair value estimates used in the quantitative impairment test are calculated using a combination of the income and market approaches. The income approach is based on the present value of future cash flows of each reporting unit, while the market approach is based on certain multiples of selected guideline public companies or selected guideline transactions. The approaches incorporate a number of market participant assumptions including future growth rates, discount rates, income tax rates and market activity in assessing fair value and are reporting unit specific. If the carrying amount exceeds the reporting unit’s fair value, we recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value.

The fair value measurement associated with the quantitative goodwill impairment test is based on significant inputs that are not observable in the market and thus represents a Level 3 measurement. Significant changes in the underlying assumptions used to value goodwill could significantly increase or decrease the fair value estimates used for impairment assessments.

For our 2019 impairment tests, the Company identified one reporting unit, Core. The Company performed a quantitative impairment assessment, as of October 1, 2019, for the Core reporting unit. The amounts below represent the results of our quantitative assessment.

We use the average of our fair values for purposes of our comparison between carrying value and fair value for the quantitative impairment test. The table below depicts the methods employed, assumptions used and percentage fair value in excess of carrying value.

2019 Impairment Test						
Reporting Unit	Discount Rate	Growth rate range	Terminal Growth Rate	Goodwill	Fair Value Exceeds Carrying Value by	Fair Value method
Core	14.0%	2.0 - 18.0%	2.0%	\$ 220,367	72.0%	Income Approach, Market Approach

The 2019 fair value of the reporting unit was estimated using a combination of the income approach, which incorporates the use of the discounted cash flow method, and the market approach, which incorporates the use of earnings and revenue multiples based on market data. We generally applied an equal weighting to the income and market approaches for our analysis when both are applied.

For the income approach, we used projections, which require the use of significant estimates and assumptions specific to the reporting unit as well as those based on general economic conditions. Factors specific to each reporting unit include revenue and cost growth, profit margins, terminal value growth rates, capital expenditures projections, assumed tax rates, discount rates and other assumptions deemed reasonable by management.

For the market approach, we used judgment in identifying the relevant comparable-company market multiples. These estimates and assumptions may vary between each reporting unit depending on the facts and circumstances specific to that unit. If sufficient comparable data is not present, the market approach will not be employed. The discount rate for each reporting unit is influenced by general market conditions as well as factors specific to the reporting unit.

Factors influencing the revenue growth rates include the nature of the services the reporting unit provides for its clients, the maturity of the reporting unit and any known concentrated customer contract renewals. We believe that the estimates and assumptions we made are reasonable, but they are susceptible to change from period to period. Actual results of operations, cash flows and other factors will likely differ from the estimates used in our valuation, and it is possible that differences and changes could be material.

A deterioration in profitability, adverse market conditions, significant client losses, changes in spending levels of our existing clients or a different economic outlook than currently estimated by management could have a significant impact on the estimated fair value of our reporting units and could result in an impairment charge in the future.

#### Capitalized Software Development Costs

Software development costs are accounted for in accordance with either ASC 985-20, "Software - Costs of Software to be Sold, Leased or Marketed," or ASC 350-40, "Internal-Use Software." Costs associated with the planning and designing phase of software development are classified as research and development costs and are expensed as incurred. The amounts capitalized include external direct costs of services used in developing internal-use software, employee compensation and related expenses of personnel directly associated with the development activities and interest. Once technological feasibility has been determined, a portion of the costs incurred in development, including coding, testing and quality assurance, are capitalized until available for general release to clients.

Amortization is calculated on a solution-by-solution basis and is recognized over the estimated economic life of the software, typically ranging two to three years. Amortization begins when the software is substantially completed for its intended use. Costs incurred during the preliminary and post-implementation stages are expensed as incurred. The amounts capitalized include external direct costs of services used in developing internal-use software, employee compensation and related expenses of personnel directly associated with the development activities and interest. Software development costs are evaluated for recoverability whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Unrecoverable costs are reviewed annually and recognized in the period they become unrecoverable, as needed, and are recorded in the Consolidated Statements of Operations as depreciation and amortization expense.

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

A review of long-lived assets for impairment is performed when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. If an indication of impairment is present, the Company compares the estimated undiscounted future cash flows to be generated by the asset to the asset's carrying amount. If the undiscounted future cash flows are less than the carrying amount of the asset, the Company records an impairment loss equal to the amount by which the asset's carrying amount exceeds its fair value. The fair value is determined based on valuation techniques such as a comparison to fair values of similar assets or using a discounted cash flow analysis.

This fair value measurement is based on significant inputs that are not observable in the market and thus represents a Level 3 measurement. Significant changes in the underlying assumptions used to value long lived assets could significantly increase or decrease the fair value estimates used for impairment assessments.

Long lived assets that do not have indefinite lives are amortized/depreciated over their useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. The Company reevaluates the useful life determinations each year to determine whether events and circumstances warrant a revision to the remaining useful lives.

### **Recently Issued Accounting Standards**

For a discussion of recently issued accounting standards see *Note 2. Summary of Significant Accounting Policies* of the Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K.

### **Off-Balance Sheet Arrangements**

We had no off-balance sheet arrangements as of December 31, 2019 and December 31, 2018 that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

### Market Risk

The following discussion about market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. We deposit our excess cash in what we believe are high-quality financial instruments, primarily money market funds and certificates of deposit and, we may be exposed to market risks related to changes in interest rates. We do not actively manage the risk of interest rate fluctuations on our marketable securities; however, such risk is mitigated by the relatively short-term nature of these investments. These investments are denominated in United States dollars.

The primary objective of our investment activities is to preserve our capital for the purpose of funding operations, while at the same time maximizing the income, we receive from our investments without significantly increasing risk. To achieve these objectives, our investment policy allows us to maintain a portfolio of cash equivalents and short- and long-term investments in a variety of securities, which could include commercial paper, money market funds and corporate and government debt securities. Our cash, cash equivalents and marketable securities at December 31, 2019 and December 31, 2018 were invested in liquid money market accounts, certificates of deposit and government securities. All market-risk sensitive instruments were entered into for non-trading purposes.

### Foreign Currency Exchange Risk

We are exposed to translation risk because certain of our foreign operations utilize the local currency as their functional currency and those financial results must be translated into U.S. dollars. As currency exchange rates fluctuate, translation of the financial statements of foreign businesses into U.S. dollars affects the comparability of financial results between years.

We do not hold any derivative instruments and do not engage in any hedging activities. Although our reporting currency is the U.S. dollar, we may conduct business and incur costs in the local currencies of other countries in which we may operate, make sales and buy materials and services. As a result, we are subject to foreign currency transaction risk. Further, changes in exchange rates between foreign currencies and the U.S. dollar could affect our future net sales, cost of sales and expenses and could result in foreign currency transaction gains or losses.

We cannot accurately predict future exchange rates or the overall impact of future exchange rate fluctuations on our business, results of operations and financial condition. To the extent that our international activities recorded in local currencies increase in the future, our exposure to fluctuations in currency exchange rates will correspondingly increase and hedging activities may be considered if appropriate.

### Interest Rate Risk

We are exposed to the risk of interest rate fluctuations on the interest income earned on our cash and cash equivalents, and our revolving credit facility. A hypothetical 100 basis point movement in interest rates applicable to our cash and cash equivalents outstanding at December 31, 2019 would increase interest income by approximately \$0.4 million on an annual basis. Borrowings under the revolving credit facility bear interest at a rate equal to, at our option, either (1) the arithmetic average of the LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period (one, three or six months (or 12 months if agreed to by all applicable Lenders)) as selected by us relevant to such borrowing plus the applicable margin, or (2) a base rate determined by reference to the greatest of the federal funds rate plus 0.50%, the prime commercial lending rate as determined by the Agent, and the daily LIBOR rate plus 1.00%, in each case plus an applicable margin and subject to a floor of 0.00%. We did not have any borrowings outstanding under the revolving credit facility as of December 31, 2019.



**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Synchronoss Technologies, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Synchronoss Technologies, Inc. (the Company) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive (loss) income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2019, and the related notes and financial statement schedule listed in the Index at Item 15(a)(2) (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, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

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, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated March 16, 2020 expressed an unqualified opinion thereon.

### Adoption of ASU No. 2014-09

As discussed in Note 2 to the consolidated financial statements, on January 1, 2018 the Company changed its method of accounting for recognizing revenue in 2018 to the adoption of Accounting Standards Update (ASU) No. 2014-09, Revenue from Contracts with Customers (Topic 606), and the amendments in ASUs 2015-14, 2016-08, 2016-10 and 2016-12.

### Adoption of ASU No. 2016-02

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for leases in 2019 due to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases and associated amendments (Topic 842) using the modified retrospective method.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's 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 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 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 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.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2001.

Iselin, New Jersey

March 16, 2020

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**CONSOLIDATED BALANCE SHEETS (In thousands, except per share data)**

	December 31, 2019	December 31, 2018
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 38,990	\$ 103,771
Restricted cash	11	6,089
Marketable securities, current	11	28,230
Accounts receivable, net of allowances for bad debt of \$1,864 and \$4,599 at December 31, 2019 and December 31, 2018, respectively*	65,863	102,798
Prepaid expenses	33,230	45,058
Other current assets	4,792	8,508
<b>Total current assets</b>	<b>142,897</b>	<b>294,454</b>
Marketable securities, non-current	—	6,658
Property and equipment, net	26,525	67,937
Operating lease right-of-use assets	53,965	—
Goodwill	222,969	224,899
Intangible assets, net	77,613	98,706
Other assets	8,054	8,982
Equity method investment	—	1,619
<b>Total assets</b>	<b>\$ 532,023</b>	<b>\$ 703,255</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 21,551	\$ 13,576
Accrued expenses	65,987	59,545
Deferred revenues, current	65,858	57,101
Short-term convertible debt, net of debt issuance costs	—	113,542
<b>Total current liabilities</b>	<b>153,396</b>	<b>243,764</b>
Lease financing obligation	—	9,494
Operating lease liabilities, non-current	60,976	—
Deferred tax liabilities	1,679	1,347
Deferred revenues, non-current	21,941	59,841
Other non-current liabilities	4,589	10,797
Redeemable noncontrolling interest	12,500	12,500
<b>Commitments and contingencies</b>		
Series A Convertible Participating Perpetual Preferred Stock, \$0.0001 par value; 10,000 shares authorized; 217 shares issued and outstanding at December 31, 2019	200,865	176,603
<b>Stockholders' equity:</b>		
Common stock, \$0.0001 par value; 100,000 shares authorized, 51,704 and 49,836 shares issued; 44,542 and 42,674 outstanding at December 31, 2019 and December 31, 2018, respectively	5	5
Treasury stock, at cost (7,162 and 7,162 shares at December 31, 2019 and December 31, 2018, respectively)	(82,087)	(82,087)
Additional paid-in capital	525,739	534,673
Accumulated other comprehensive loss	(33,261)	(30,383)
Accumulated deficit	(334,319)	(233,299)
<b>Total stockholders' equity</b>	<b>76,077</b>	<b>188,909</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 532,023</b>	<b>\$ 703,255</b>

\* See Note 5. *Investments in Affiliates and Related Transactions* for related party transactions reflected in this account.

See accompanying notes to consolidated financial statements.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)

	Twelve Months Ended December 31,		
	2019	2018	2017
Net revenues	\$ 308,749	\$ 325,839	\$ 402,361
Costs and expenses:			
Cost of revenues*	150,407	158,802	181,453
Research and development	75,568	79,172	90,850
Selling, general and administrative	112,771	122,112	154,037
Restructuring charges	755	12,375	10,739
Depreciation and amortization	77,036	117,654	94,884
Total costs and expenses	416,537	490,115	531,963
Loss from continuing operations	(107,788)	(164,276)	(129,602)
Interest income	1,258	7,770	12,502
Interest expense	(1,355)	(4,911)	(55,771)
Gain (loss) on extinguishment of debt	822	1,760	(29,413)
Other Income (expense), net	7,389	(74,917)	(17,678)
Equity method investment loss	(1,619)	(28,600)	(9,125)
Loss from continuing operations, before taxes	(101,293)	(263,174)	(229,087)
Benefit (provision) for income taxes	(2,174)	17,894	34,863
Net loss from continuing operations	(103,467)	(245,280)	(194,224)
Net income from discontinued operations, net of tax**	—	18,288	75,495
Net loss	(103,467)	(226,992)	(118,729)
Net (income) loss attributable to redeemable noncontrolling interests	(1,126)	8,837	9,291
Preferred stock dividend	(32,134)	(25,593)	—
Net loss attributable to Synchronoss	\$ (136,727)	\$ (243,748)	\$ (109,438)
<b>Earnings per share</b>			
<b>Basic:</b>			
Continuing operations	\$ (3.36)	\$ (6.51)	\$ (4.14)
Discontinued operations**	—	0.46	1.69
	\$ (3.36)	\$ (6.05)	\$ (2.45)
<b>Diluted:</b>			
Continuing operations	\$ (3.36)	\$ (6.51)	\$ (4.14)
Discontinued operations**	—	0.46	1.69
	\$ (3.36)	\$ (6.05)	\$ (2.45)
<b>Weighted-average common shares outstanding:</b>			
Basic	40,694	40,277	44,669
Diluted	40,694	40,277	44,669

\* Cost of revenues excludes depreciation and amortization which are shown separately.

\*\* See Note 3. *Acquisitions and Divestitures* for transactions classified as discontinued operations

See accompanying notes to consolidated financial statements.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME**  
**(In thousands)**

	Twelve Months Ended December 31,		
	2019	2018	2017
Net loss	\$ (103,467)	\$ (226,992)	\$ (118,729)
Other comprehensive (loss) income, net of tax:			
Foreign currency translation adjustments	(1,768)	(6,152)	17,027
Unrealized loss on available for sale securities	(710)	(37)	18
Net loss on intra-entity foreign currency transactions	(400)	(821)	1,932
Total other comprehensive income (loss)	(2,878)	(7,010)	18,977
Comprehensive loss	(106,345)	(234,002)	(99,752)
Comprehensive (income) loss attributable to redeemable noncontrolling interests	(1,126)	8,837	9,291
Comprehensive loss attributable to Synchronoss	\$ (107,471)	\$ (225,165)	\$ (90,461)

See accompanying notes to consolidated financial statements.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands)

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulative Other Comprehensive Income (Loss)	Accumulated deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2016</b>	50,388	\$ 5	(5,096)	\$ (106,631)	\$ 571,153	\$ (42,350)	\$ 107,620	\$ 529,797
Cumulative effect of adjustment to retained earnings (ASU Adoption)	—	—	—	—	—	—	(3,196)	(3,196)
Stock based compensation	—	—	—	—	28,446	—	—	28,446
Issuance of restricted stock	1,565	—	—	—	—	—	—	—
Issuance of common stock on exercise of options	104	—	—	—	2,460	—	—	2,460
ESPP compensation	—	—	—	—	495	—	—	495
Sale of treasury stock in connection with an employee stock purchase plan	—	—	36	1,047	—	—	—	1,047
Shares withheld for taxes in connection with issuance of restricted stock	(29)	—	—	—	(442)	—	—	(442)
Fair value of awards assumed on acquisition	—	—	—	—	4,701	—	—	4,701
Other	—	—	—	—	31	—	—	31
Adjustments to redemption value of noncontrolling interest	—	—	—	—	(9,291)	—	—	(9,291)
Net loss attributable to Synchronoss	—	—	—	—	—	—	(109,438)	(109,438)
Total other comprehensive income (loss)	—	—	—	—	—	18,977	—	18,977
<b>Balance at December 31, 2017</b>	<u>52,028</u>	<u>\$ 5</u>	<u>(5,060)</u>	<u>\$ (105,584)</u>	<u>\$ 597,553</u>	<u>\$ (23,373)</u>	<u>\$ (5,014)</u>	<u>\$ 463,587</u>
	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulative Other Comprehensive Income (Loss)	Accumulated deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2017</b>	52,028	\$ 5	(5,060)	\$ (105,584)	\$ 597,553	\$ (23,373)	\$ (5,014)	\$ 463,587
Stock based compensation	—	—	—	—	27,201	—	—	27,201
Issuance of restricted stock	1,707	—	—	—	—	—	—	—
Preferred stock dividends	—	—	—	—	(24,331)	—	—	(24,331)
Amortization of preferred stock issuance costs	—	—	—	—	(1,262)	—	—	(1,262)
Retirement of treasury stock	(3,893)	—	3,893	68,327	(68,327)	—	—	—
Shares withheld for taxes in connection with issuance of restricted stock	(6)	—	—	—	(76)	—	—	(76)
Treasury shares received in connection with PIPE Purchase Agreement	—	—	(5,995)	(44,830)	—	—	—	(44,830)
Net loss attributable to Synchronoss	—	—	—	—	—	—	(218,155)	(218,155)
Non-controlling interest	—	—	—	—	3,943	—	—	3,943
Total other comprehensive loss	—	—	—	—	—	(7,059)	—	(7,059)
ASC 606 revenue recognition implementation impact	—	—	—	—	—	49	(10,130)	(10,081)
Other	—	—	—	—	(28)	—	—	(28)
<b>Balance at December 31, 2018</b>	<u>49,836</u>	<u>\$ 5</u>	<u>(7,162)</u>	<u>\$ (82,087)</u>	<u>\$ 534,673</u>	<u>\$ (30,383)</u>	<u>\$ (233,299)</u>	<u>\$ 188,909</u>

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulative Other Comprehensive Income (Loss)	Accumulated deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2018</b>	49,836	\$ 5	(7,162)	\$ (82,087)	\$ 534,673	\$ (30,383)	\$ (233,299)	\$ 188,909
Stock based compensation	—	—	—	—	22,050	—	—	22,050
Issuance of restricted stock	1,863	—	—	—	—	—	—	—
Preferred stock dividends declared	—	—	—	—	(29,877)	—	—	(29,877)
Amortization of preferred stock issuance costs	—	—	—	—	(2,257)	—	—	(2,257)
Issuance of common stock on exercise of options	7	—	—	—	39	—	—	39
Shares withheld for taxes in connection with issuance of restricted stock	(2)	—	—	—	(15)	—	—	(15)
ASC 842 Lease implementation Adjustments	—	—	—	—	—	—	3,574	3,574
Net loss attributable to Synchronoss	—	—	—	—	—	—	(104,593)	(104,593)
Non-controlling interest	—	—	—	—	1,126	—	—	1,126
Total other comprehensive income (loss)	—	—	—	—	—	(2,878)	—	(2,878)
Other	—	—	—	—	—	—	(1)	(1)
<b>Balance at December 31, 2019</b>	<u>51,704</u>	<u>\$ 5</u>	<u>(7,162)</u>	<u>\$ (82,087)</u>	<u>\$ 525,739</u>	<u>\$ (33,261)</u>	<u>\$ (334,319)</u>	<u>\$ 76,077</u>

See accompanying notes to consolidated financial statements.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (In thousands)**

	Twelve Months Ended December 31,		
	2019	2018	2017
<b>Operating activities:</b>			
Net loss continuing operations	\$ (103,467)	\$ (245,280)	\$ (194,224)
Net loss from discontinued operations	—	—	75,495
Gain (loss) on Sale of discontinued operations, net of tax	—	18,288	(122,842)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Depreciation and amortization	77,037	97,092	93,924
Goodwill impairment	—	9,100	—
Impairment of long-lived assets and capitalized software	—	11,462	960
Change in fair value of financial instruments	(163)	(3,849)	4,367
Amortization of debt issuance costs	285	1,294	12,771
(Gain) loss on extinguishment of debt	(822)	(1,760)	29,413
Accrued PIK interest	—	(7,037)	(12,090)
Allowance for loan losses	—	84,314	14,562
Loss (earnings) from Equity method investments	1,619	28,600	9,125
(Gain) loss on Disposals of fixed assets	15	277	(4,947)
Discontinued operations non-cash and working capital adjustments*	—	—	48,647
(Gain) loss on Disposals of intangible assets	(5,429)	—	—
Amortization of bond premium	(34)	107	244
Deferred income taxes	357	(12,350)	19,243
Non-cash interest on leased facility	—	—	1,203
Stock-based compensation	22,287	27,604	22,495
Contingent consideration obligation	—	—	(2,711)
Cumulative adjustment to STI receivable	26,044	—	—
ROU Asset Impairment	6,268	—	—
<b>Changes in operating assets and liabilities:</b>			
Accounts receivable, net of allowance for doubtful accounts	10,891	(21,521)	29,283
Prepaid expenses and other current assets	18,209	(5,315)	(5,513)
Other assets	1,710	973	3,237
Accounts payable	8,879	6,846	(9,098)
Accrued expenses	2,115	(18,068)	(4,949)
Other liabilities	(4,362)	(4,675)	(3,337)
Deferred revenues	(28,856)	2,529	(23,506)
<b>Net cash provided by (used in) operating activities</b>	<b>32,583</b>	<b>(31,369)</b>	<b>(18,248)</b>
<b>Investing activities:</b>			
Purchases of fixed assets	(8,183)	(11,656)	(12,151)
Purchases of intangible assets and capitalized software	(13,008)	(14,372)	(9,119)
Proceeds from the sale of intangibles	5,429	—	—
Proceeds from the sale of Speechcycle	—	—	13,500
Purchases of marketable securities available for sale	(51,745)	(36,789)	(219)
Maturity of marketable securities available for sale	86,884	4,865	12,371
Proceeds from the sale of discontinued operations	—	—	928,171
Equity investment	—	404	608
Investing activities in discontinued operations*	—	—	(13,721)
Investment in note receivable	—	—	(6,187)
Business acquired, net of cash	—	(9,734)	(815,008)
<b>Net cash provided by (used in) investing activities</b>	<b>19,377</b>	<b>(67,282)</b>	<b>98,245</b>



<b>Financing activities:</b>			
Share-based compensation-related proceeds, net of taxes paid on withholding shares	39	—	2,584
Taxes paid on withholding shares	(15)	—	(442)
Payments on contingent consideration	—	—	(122)
Debt issuance costs related to the Credit Facility	—	—	(3,692)
Debt issuance costs related to long-term debt	—	—	(19,887)
Debt amendment costs related to long-term debt	—	—	(16,776)
Proceeds from issuance of convertible notes	—	—	900,000
Retirement of Convertible Senior Notes & related costs	(113,006)	(113,696)	—
Repayment of long-term debt	—	—	(900,000)
Borrowings on revolving line of credit	2,000	—	—
Repayment of revolving line of credit	(2,000)	—	(29,000)
Excess tax benefits from stock option exercises	—	—	17
Proceeds from the sale of treasury stock in connection with an employee stock purchase plan	—	—	1,047
Proceeds from issuance of preferred stock	—	86,220	—
Preferred dividend payment	(7,075)	(7,075)	—
Proceeds from mandatorily redeemable financial instruments	—	—	33,592
Payments on capital obligations	(1,200)	(1,334)	(2,985)
<b>Net cash used in financing activities</b>	<b>(121,257)</b>	<b>(35,885)</b>	<b>(35,664)</b>
Effect of exchange rate changes on cash	(1,562)	(1,729)	(9,641)
<b>Net decrease in cash and cash equivalents</b>	<b>(70,859)</b>	<b>(136,265)</b>	<b>34,692</b>
<b>Cash and cash equivalents, beginning of period</b>	<b>109,860</b>	<b>246,125</b>	<b>211,433</b>
<b>Cash and cash equivalents, end of period</b>	<b>\$ 39,001</b>	<b>\$ 109,860</b>	<b>\$ 246,125</b>

<b>Supplemental disclosures of cash flow information:</b>			
Cash paid for income taxes	\$ 3,598	\$ 22,549	\$ 7,612
Cash refund for income taxes	\$ 20,733	\$ —	\$ —
Cash paid for interest	\$ 666	\$ 3,258	\$ 55,957

<b>Supplemental disclosures of non-cash investing and financing activities:</b>			
Paid in kind dividends on Series A Convertible Participating Perpetual Preferred Stock	\$ 22,005	\$ 7,075	\$ —
Issuance of common stock in connection with Intralinks acquisition	\$ —	\$ —	\$ 4,700
Cash and cash equivalents per Consolidated Balance Sheets	\$ 38,990	\$ 103,771	\$ 156,299
Restricted cash	\$ 11	\$ 6,089	\$ 89,826
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 39,001</b>	<b>\$ 109,860</b>	<b>\$ 246,125</b>

\* See Note 5. *Investments in Affiliates and Related Transactions* for related party transactions reflected in this account. See accompanying notes to consolidated financial statements.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in tables in thousands, except for per share data or unless otherwise noted)**

## **1. Description of Business**

### ***General***

Synchronoss Technologies, Inc. (“Synchronoss” or the “Company”) Digital, Cloud, Messaging and IoT platforms help the world’s leading companies, including operators, original equipment manufacturers (“OEMs”), and Media and Technology providers to deliver continuously transformative customer experiences that create high value engagement and new monetization opportunities.

The Company currently operates in and markets solutions and services directly through the Company’s sales organizations in North America, Europe and Asia-Pacific. The Company’s platforms give customers new opportunities in the Telecommunications, Media and Technology (“TMT”) space, taking advantage of the rapidly converging services, connected devices, networks and applications.

The Company delivers platforms, products and solutions including:

- Digital experience management (Platform as a Service) - including digital journey creation, and journey design products that use analytics that power digital advisor products for IT and Business Channel Owners
- Cloud sync, backup, storage, device set up, content transfer and content engagement for user generated content
- Advanced, multi-channel messaging peer-to-peer (“P2P”) communications and application-to-person (“A2P”) commerce solutions
- IoT management technology for Smart Cities, Smart Buildings and more

The Synchronoss Digital Experience Platform (“DXP”) is a purpose-built experience management toolset that sits between the customers’ end-user facing applications and their existing back end systems, enabling the authoring and management of customer journeys in a cloud-native no/low-code environment. This platform uses products such as Journey Creator, Journey Advisor, CX Baseline and Digital Coach to create a wide variety of insight-driven customer experiences across existing channels (digital and analogue) including creating the ability to pause and resume continuous, intelligent experiences in an omni-channel environment. DXP can be operated by IT professionals and “citizen” developers (business analysts, etc.) enabling the Company’s customers to bring more compelling and complex experiences to market in less time with fewer and more diverse resources in a real-time, collaborative environment.

The Synchronoss Personal Cloud Platform™ is a secure and highly scalable white label platform designed to store and sync subscriber’s personally created content seamlessly to and from current and new devices. This allows a carrier’s customers to protect, engage with and manage their personal content and gives the Company’s Operator customers the ability to increase average revenue per user (“ARPU”) through a new monthly recurring charge (“MRC”) and opportunities to mine valuable data that will give subscribers access to new, beneficial services. Additionally, the Company’s Personal Cloud Platform performs an expanding set of value-add services including facilitating an Operator’s initial device setup and enhancing visibility and control across disparate devices within subscribers’ smart homes.

The Synchronoss Messaging Platform powers hundreds of millions of subscribers’ mail boxes worldwide. The Company’s Advanced Messaging Product is a powerful, secure and intelligent white label messaging platform that expands capabilities for Operators and TMT companies to offer P2P messaging via Rich Communications Services (“RCS”). Additionally, the Company’s Advanced Messaging Product powers commerce and a robust ecosystem for Operators, brands and advertisers to execute Application to Person (“A2P”) commerce and data-rich dialogue with subscribers.

The Synchronoss IoT Platform creates an easy to use environment and extensible ecosystem making the management of disparate devices, sensors, data pools and networks easier to manage by IoT administrators and drives the propagation of new IoT applications and monetization models for TMT companies. The Company’s IoT platform utilizes Synchronoss platforms (DXP, Cloud, Messaging), products and solutions to make IoT more accessible and actionable for Smart Building facility managers, Smart City planners, Automotive OEMs and TMT ecosystem players.

## **2. Summary of Significant Accounting Policies**

### ***Basis of Presentation and Consolidation***

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The consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and variable interest entities (“VIE”) in which the Company is the primary beneficiary and entities in which the Company has a controlling interest. Investments in less than majority-owned companies in which the Company does not have a controlling interest, but does have significant influence, are accounted for as equity method investments. Investments in less than majority-owned companies in which the Company does not have the ability to exert significant influence over the operating and financial policies of the investee are accounted for using the cost method. All material intercompany transactions and accounts are eliminated in consolidation. Certain prior year amounts have been reclassified to conform to the current year’s presentation.

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

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

#### ***Revenue Recognition and Deferred Revenue***

The Company generates revenue from the delivery of a range of products, solutions and services principally on a transactional or subscription basis (“SaaS”) or in the form of Professional Services or Software Licenses. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred, fees are fixed or determinable and collection is considered probable.

*Transactional and Subscription Service Arrangements:* Transaction and subscription revenues consist of revenues derived from the processing of transactions through the Company’s service platforms, providing enterprise portal management services on a subscription basis and maintenance agreements on software licenses. Transaction service arrangements include services such as processing equipment orders, new account set-up and activation, number port requests, credit checks and inventory management. Subscription services include monthly active user fees, SaaS fees, hosting and storage and the related maintenance support for those services.

Transaction revenues are principally based on a contractual price per transaction and are recognized based on the number of transactions processed during each reporting period. Revenues are recorded based on the total number of transactions processed at the applicable price established in the relevant contract. The total amount of revenue recognized is based primarily on the volume of transactions. Subscription revenues are recorded one of two ways: on a straight-line basis over the life of the contract or on a fixed monthly fee based on a set contracted amount.

Many of the Company’s contracts guarantee minimum volume transactions from the customer. In these instances, if the customer’s total transaction volume for the period is less than the contractual amount, the Company record revenues at the minimum guaranteed amount. Set-up fees for transactional service arrangements are deferred and recognized on a straight-line basis over the life of the contract since these amounts would not have been paid by the customer without the related transactional service arrangement. Revenues are presented net of discounts, which are volume level driven, or credits, which are performance driven, and are determined in the period in which the volume thresholds are met, or the services are provided.

*Professional Service and Software License Arrangements:* Professional services include process and workflow consulting services and development services. Professional services when sold with transactional or subscription service arrangements are accounted for separately when the professional services have value to the customer on a standalone basis and there is objective and reliable evidence of fair value of the professional services. When accounted for separately, professional service revenues are recognized as services are performed and all other elements of revenue recognition have been satisfied.

In determining whether professional service revenues can be accounted for separately from transaction or subscription service revenues, the Company considers the following factors for each professional services agreement: availability of the professional services from other vendors, whether objective and reliable evidence of fair value exists of the undelivered elements, the nature of the professional services, the timing of when the professional services contract was signed in comparison to the transaction or subscription service start date and the contractual independence of the transactional or subscription service from the professional services.

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If a professional service arrangement were not to qualify for separate accounting, the Company would recognize the professional service revenues ratably over the remaining term of the transaction or subscription agreement.

*Multiple Element Arrangements:* Revenue from software license arrangements is recognized when the license is delivered to the customers and all of the software revenue recognition criteria are met. When software arrangements include multiple elements, the arrangement consideration is allocated at the inception to all deliverables using the residual method provided the Company has vendor specific objective evidence (“VSOE”) on all undelivered elements. The Company determines VSOE for each element based on historical stand-alone sales to third parties.

When transaction or subscription service arrangements, include multiple elements, the arrangement consideration is allocated at the inception of an arrangement to all deliverables using the relative selling price method. The relative selling price method allocates any discount in the arrangement proportionally to each deliverable on the basis of each deliverable’s selling price. The selling price used for each deliverable will be based on VSOE if available, third-party evidence (“TPE”) if vendor- specific objective evidence is not available or estimated selling price (“ESP”) if neither vendor-specific objective evidence nor third-party evidence is available. The objective of ESP is to determine the price at which the Company would transact a sale if the product or service were sold on a stand-alone basis. The Company determines ESP by considering multiple factors including, but not limited to, geographies, market conditions, competitive landscape, internal costs, gross margin objectives, and pricing practices. ESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings.

While specific and detailed rules and guidelines related to revenue recognition are followed, the Company makes and uses management judgments and estimates in connection with the revenue recognized in any reporting period, particularly in the areas described above, as well as collectability. If management made different estimates or judgments, differences in the timing of the recognition of revenue could occur.

#### *Deferred Revenue*

Deferred revenues represent billings to customers for services in advance of the performance of services, with revenues recognized as the services are rendered, and also include the fair value of deferred revenues recorded as a result of acquisitions.

#### *Service Level Standards*

Pursuant to certain contracts, the Company is subject to service level standards and to corresponding penalties for failure to meet those standards. All performance-related penalties are reflected as a corresponding reduction of the Company’s revenues. These penalties, if applicable, are recorded in the month incurred and were insignificant for the years ended December 31, 2019, 2018 and 2017, respectively.

#### *Cost of Revenues*

Cost of services includes all direct materials, direct labor and those indirect costs related to revenues such as indirect labor, materials and supplies and facilities cost, exclusive of depreciation expense.

#### *Research and Development*

Software development costs are accounted for in accordance with either ASC 985-20, “*Software - Costs of Software to be Sold, Leased or Marketed,*” or ASC 350-40, “*Internal-Use Software.*” Costs associated with the planning and designing phase of software development are classified as research and development costs and are expensed as incurred. The amounts capitalized include external direct costs of services used in developing internal-use software, employee compensation and related expenses of personnel directly associated with the development activities. Once technological feasibility has been determined, a portion of the costs incurred in development, including coding, testing and quality assurance, are capitalized until available for general release to clients.

Amortization is calculated on a solution-by-solution basis and is recognized over the estimated economic life of the software, typically ranging two to three years. Amortization begins when the software is substantially completed for its intended use. Costs

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incurred during the preliminary and post-implementation stages are expensed as incurred. The amounts capitalized include external direct costs of services used in developing internal-use software, employee compensation and related expenses of personnel directly associated with the development activities. Software development costs are evaluated for recoverability whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Unrecoverable costs are reviewed annually and recognized in the period they become unrecoverable, as needed, and are recorded in the Consolidated Statements of Operations as depreciation and amortization expense.

The unamortized software development costs and amortization expense were as follows:

	Year ended December 31,		
	2019	2018	2017
Unamortized software development costs	\$ 22,240	\$ 17,490	\$ 11,695
Software development amortization expense	8,258	8,123	3,178

The Company recognized impairment charges to its capitalized software intangible assets, of nil, \$0.5 million and \$1.0 million for the years ended December 31, 2019, 2018 and 2017, respectively. The Company includes these impairments within the depreciation and amortization in its Consolidated Statements of Operations.

***Concentration of Credit Risk***

The Company's financial instruments that are exposed to concentration of credit risk consist primarily of cash and cash equivalents, marketable securities and accounts receivable. The Company maintains its cash and cash equivalents at several major financial institutions. The Company has not experienced any realized losses in such accounts and believes it is not exposed to any significant credit risk related to cash, cash equivalents and securities. The Company's cash equivalents and short-term marketable securities consist primarily of money market funds, certificates of deposit, commercial paper, and municipal and corporate bonds. The Company believes that concentration of credit risk with respect to accounts receivable is limited because of the creditworthiness of its major customers.

The Company's top five customers accounted for 69.2%, 69.0% and 73.0% of net revenues for the years ended December 31, 2019, 2018 and 2017, respectively. Contracts with these customers typically run for three to five years. Of these customers, Verizon accounted for more than 10% of the Company's revenues in 2019, 2018, and 2017.

***Cash and Cash Equivalents***

The Company considers all highly liquid investments purchased with an original maturity of three months or less at the date of acquisition to be cash equivalents.

***Restricted Cash***

Restricted cash includes amounts related to various deposits, escrows and other cash collateral that are restricted by contractual obligation. As of December 31, 2019, the restricted cash amounts were primarily attributed to cash held in transit, and operating cash held by the Company's consolidated joint venture Zentry, LLC ("Zentry"), which cannot be used to fulfill the obligations of the Company as a whole.

**SYNCHRONOSS TECHNOLOGIES, INC.**  
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***Accounts Receivable***

Accounts receivable include current notes, amounts billed to customers, claims, and unbilled revenue, which consists of amounts recognized as sales but not yet billed. Substantially all amounts of unbilled receivables are expected to be billed and collected in the subsequent year. The Company had unbilled receivable balances of \$5.1 million and \$4.5 million as of December 31, 2019 and 2018, respectively.

***Fair Value of Financial Instruments and Liabilities***

The Company includes disclosures of fair value information about financial instruments and liabilities, whether or not recognized on the Consolidated Balance Sheets, for which it is practicable to estimate that value. Due to their short-term nature, the carrying amounts reported in the financial statements approximate the fair value for cash and cash equivalents, marketable securities, accounts receivable and accounts payable.

***Derivatives***

The Company evaluates convertible instruments, options, warrants or other contracts to determine if those contracts or embedded components of those contracts qualify as derivatives to be separately accounted for under Accounting Standards Codification ("ASC") Topic 815, "Derivatives and Hedging." The result of this accounting treatment is that the fair value of the derivative is marked-to-market each balance sheet date and recorded as a liability. In the event that the fair value is recorded as a liability, the change in fair value is recorded in the Consolidated Statements of Operations as other income (expense). Upon conversion or exercise of a derivative instrument, the instrument is marked to fair value at the conversion date and then that fair value is reclassified to equity. Equity instruments that are initially classified as equity that become subject to reclassification under ASC Topic 815 are reclassified to liabilities at the fair value of the instrument on the reclassification date.

***Allowance for Doubtful Accounts***

The Company maintains an allowance for estimated losses resulting from the inability of its customers to make required payments. The Company estimates uncollectible amounts based upon historical bad debts, current customer receivable balances, the age of customer receivable balances, the customer's financial condition and current economic trends.

***Property and Equipment***

Property and equipment and leasehold improvements are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which range from 3 to 5 years, or the lesser of the related initial term of the lease or useful life for leasehold improvements. Amortization of property and equipment recorded under a capital lease is included with depreciation expense. Expenditures for routine maintenance and repairs are charged against operations, while major replacements, improvements and additions are capitalized.

***Noncontrolling Interests and Mandatorily Redeemable Financial Instruments***

Noncontrolling interests ("NCI") are evaluated by the Company and are shown as either a liability, temporary equity (shown between liabilities and equity) or as permanent equity depending on the nature of the redeemable features at amounts based on formulas specific to each entity. Generally, mandatorily redeemable NCIs are classified as liabilities and non-mandatorily redeemable NCIs are classified outside of stockholders' equity in the Consolidated Balance Sheets as temporary equity under the caption, redeemable noncontrolling interests, and are measured at their redemption values at the end of each period. If the redemption value is greater than the carrying value, an adjustment is recorded in retained earnings to record the NCI at its redemption value. Redeemable NCIs that are mandatorily redeemable are classified as a liability in the Consolidated Balance Sheets under either other current liabilities or other long-term liabilities, depending on the remaining duration until settlement, and are measured at the amount of cash that would be paid if settlement occurred at the balance sheet date with any change from the prior period recognized as interest expense.

If the noncontrolling interest is not currently redeemable yet probable of becoming redeemable, the Company is required to either (1) accrete changes in the redemption value over the period from the date of issuance to the earliest redemption date of the

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instrument using an appropriate methodology, usually the interest method, or (2) recognize changes in the redemption value immediately as they occur and adjust the carrying value of the security to equal the redemption value at the end of each reporting period. The Company has elected to recognize changes in the redemption value immediately as they occur and adjust the carrying value of the noncontrolling interest to the greater of the estimated redemption value, which approximates fair value, at the end of each reporting period or the initial carrying amount.

Net income attributable to NCIs reflects the portion of the net income (loss) of consolidated entities applicable to the NCI stockholders in the accompanying Consolidated Statements of Operations. The net income attributable to NCI is classified in the Consolidated Statements of Operations as part of consolidated net income and deducted from total consolidated net income to arrive at the net income attributable to the Company.

### ***Business Combinations***

The Company accounts for business combinations in accordance with the acquisition method. The acquisition method of accounting requires that assets acquired, liabilities assumed and any noncontrolling interest in the acquiree (if any), be recorded at their fair values on the date of a business acquisition. The Company's consolidated financial statements and results of operations reflect an acquired business from the completion date of the transaction.

The judgments that the Company makes in determining the estimated fair value assigned to each class of assets acquired and liabilities assumed, as well as asset lives, can materially impact net income in periods following a business combination. The Company generally uses either the income, cost or market approach to aid in its conclusions of such fair values and asset lives. The income approach presumes that the value of an asset can be estimated by the net economic benefit to be received over the life of the asset, discounted to present value. The cost approach presumes that an investor would pay no more for an asset than its replacement or reproduction cost. The market approach estimates value based on what other participants in the market have paid for reasonably similar assets. Although each valuation approach is considered in valuing the assets acquired, the approach ultimately selected is based on the characteristics of the asset and the availability of information.

The Company records contingent consideration resulting from a business combination at its fair value on the acquisition date. Each reporting period thereafter, the Company revalues these obligations and records increases or decreases in their fair value as an adjustment to net change in contingent consideration obligation within the Consolidated Statements of Operations. Changes in the fair value of the contingent consideration obligation can result from updates in the achievement of financial or other operational targets and changes to the weighted probability of achieving those future targets. Significant judgment is employed in determining the appropriateness of these assumptions as of the acquisition date and for each subsequent period. Accordingly, any change in the assumptions described above, could have a material impact on the amount of the net change in contingent consideration obligation that the Company records in any given period.

### ***Discontinued Operations***

The Company generally classifies a disposal transaction as discontinued operation in the consolidated financial statements when it qualifies as a component of the Company, meets the held for sale criteria, is disposed of by sale, or is disposed of other than by sale and it represents a strategic shift that has a major effect on the Company's operations and financial results. Insignificant and non-strategic shifting divestitures are not classified within discontinued operations.

### ***Investments in Affiliates and Other Entities***

In the normal course of business, Synchronoss enters into various types of investment arrangements, each having unique terms and conditions. These investments may include equity interests held by Synchronoss in business entities, including general or limited partnerships, contractual ventures, or other forms of equity participation. Synchronoss determines whether such investments involve a variable interest entity ("VIE") based on the characteristics of the subject entity. If the entity is determined to be a VIE, then management determines if Synchronoss is the primary beneficiary of the entity and whether or not consolidation of the VIE is required. The primary beneficiary consolidating the VIE must normally have both (i) the power to direct the activities of a VIE that most significantly affect the VIE's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE, in either case that could potentially be significant to the VIE. When Synchronoss is deemed to be

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the primary beneficiary, the VIE is consolidated and the other party's equity interest in the VIE is accounted for as a noncontrolling interest.

The Company generally accounts for investments it makes in VIEs in which it has determined that it does not have a controlling financial interest but has significant influence over and holds at least a 20% ownership interest using the equity method. Any such investment not meeting the parameters to be accounted under the equity method would be accounted for using the cost method unless the investment had a readily determinable fair value, at which it would then be reported.

If an entity fails to meet the characteristics of a VIE, the Company then evaluates such entity under the voting model. Under the voting model, the Company consolidates the entity if they determine that they, directly or indirectly, have greater than 50% of the voting shares, and determine that other equity holders do not have substantive participating rights.

#### ***Allowance for Loan Losses***

The Company's allowance for credit losses relates to the related party note receivable and is based on the probable estimated losses that may be incurred. The allowance is based on two basic principles of accounting: (1) ASC Topic 450, "Accounting for Contingencies", which requires that losses be accrued when they are probable of occurring and estimable, and (2) ASC Topic 310, "Accounting by Creditors for Impairment of a Loan", which requires that losses be accrued based on the differences between the value of collateral and the present value of future cash flows.

The allowance for loan losses is established to estimate losses that may occur by recording a provision for loan losses that is charged to earnings in the period known. The allowance is evaluated by management taking into consideration adverse situations that may affect the borrower's ability to repay and the estimated value of any underlying collateral. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available. Measured impairment and credit losses are charged against the allowance when management believes to the extent amounts are not collectible.

#### ***Goodwill***

Goodwill represents the excess of the purchase price over the fair value of assets acquired, including other definite-lived intangible assets. Goodwill is reviewed for impairment annually as of October 1st of each year or when an interim triggering event has occurred indicating potential impairment. The Company has concluded that it has two operating segments and one reportable segment because the aggregation criteria and the quantitative threshold test was met. The Company tests for goodwill impairment on each of its reporting units, which is at the operating segment or one level below the operating segment.

During the Company's qualitative assessment, the Company makes significant estimates, assumptions, and judgments, around the financial performance of the Company, changes in share price, and forecasts of earnings, working capital requirements, and cash flows. The Company considers each reporting unit's historical results and operating trends as well as any strategic difference from the Company's historical results when determining these assumptions.

The Company can opt to perform a qualitative assessment to test a reporting unit's goodwill for impairment or the Company can directly perform the quantitative impairment test. If the Company determines that the fair value of a reporting unit is more likely than not to be less than its carrying amount, a quantitative impairment test is performed.

Fair value estimates used in the quantitative impairment test are calculated using a combination of the income and market approaches. The income approach is based on the present value of future cash flows of each reporting unit, while the market approach is based on certain multiples of selected guideline public companies or selected guideline transactions. The approaches incorporate a number of market participant assumptions including future growth rates, discount rates, income tax rates and market activity in assessing fair value and are reporting unit specific. If the carrying amount exceeds the reporting unit's fair value, the Company recognizes an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value.

The fair value measurement associated with the quantitative goodwill impairment test is based on significant inputs that are not observable in the market and thus represents a Level 3 measurement. Significant changes in the underlying assumptions used to value goodwill could significantly increase or decrease the fair value estimates used for impairment assessments.



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In order to assess the reasonableness of the estimated fair value of the Company's reporting units, the Company compares the aggregate reporting unit fair value to the Company's market capitalization on an overall basis and calculates an implied control premium (the excess of the sum of the reporting units' fair value over the Company's market capitalization on an overall basis). The Company evaluates the control premium by comparing it to observable control premiums from recent comparable transactions. If the implied control premium is determined to not be reasonable in light of these recent transactions, the Company re-evaluates its reporting unit fair values, which may result in an adjustment to the discount rate and/or other assumptions.

This re-evaluation could result in a change to the estimated fair value for certain or all reporting units. If the fair value of a reporting unit exceeds the carrying amount of the net assets assigned to that reporting unit, goodwill is not impaired.

If the fair value of the reporting unit is less than its carrying amount, goodwill is impaired and the excess of the reporting unit's carrying value over the fair value is recognized as an impairment loss.

The Company recorded a nil, \$9.1 million and nil impairment charge on the Zentry joint venture for the years ended December 31, 2019, 2018 and 2017, respectively. For further details, see *Note 7. Goodwill and Intangibles*.

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

A review of long-lived assets for impairment is performed when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. If an indication of impairment is present, the Company compares the estimated undiscounted future cash flows to be generated by the asset to the asset's carrying amount. If the undiscounted future cash flows are less than the carrying amount of the asset, the Company records an impairment loss equal to the amount by which the asset's carrying amount exceeds its fair value. The fair value is determined based on valuation techniques such as a comparison to fair values of similar assets or using a discounted cash flow analysis.

This fair value measurement is based on significant inputs that are not observable in the market and thus represents a Level 3 measurement. Significant changes in the underlying assumptions used to value long lived assets could significantly increase or decrease the fair value estimates used for impairment assessments.

Long lived assets that do not have indefinite lives are amortized/depreciated over their useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. The Company reevaluates the useful life determinations each year to determine whether events and circumstances warrant a revision to the remaining useful lives.

#### ***Income Taxes***

On December 22, 2017, the U.S. government enacted TCJA. The TCJA makes changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among others, that will generally be effective for taxable years beginning after December 31, 2017. While our accounting for the recorded impact of the TCJA is deemed to be complete as of December 31, 2018, these amounts are based on prevailing regulations and currently available information, and any additional guidance issued by the Internal Revenue Service (IRS) could impact our recorded amounts in future periods. In 2018, the impact of the TCJA was minor due to the losses incurred and the valuation allowance position.

Since the Company conducts operations on a global basis, the effective tax rate has, and will depend upon, the geographic distribution of pre-tax earnings among locations with varying tax rates. The Company accounts for the effects of income taxes that result from activities during the current and preceding years. Under this method, deferred income tax liabilities and assets are based on the difference between the financial statement carrying amounts and the tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse or be utilized. The realization of deferred tax assets is contingent upon the generation of future taxable income. A valuation allowance is recorded if it is "more likely than not" that a portion or all of a deferred tax asset will not be realized.

In evaluating the Company's ability to recover deferred tax assets within the jurisdiction from which they arise, the Company considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. In projecting future taxable income, the Company begins

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with historical results and incorporate assumptions including the amount of future state, federal and foreign pretax operating income, the reversal of temporary differences, and the implementation of feasible and prudent tax-planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates the Company is using to manage the underlying businesses. In evaluating the objective evidence that historical results provide, the Company considers three years of cumulative operating loss.

The Company recognizes a tax benefit from an uncertain tax position only if it is more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is measured by determining the amount that has a greater than 50 percent likelihood of being realized upon the settlement of the position. Components of the reserve are classified as current or a long-term liability in the Consolidated Balance Sheets based on when the Company expects each of the items to be settled. The Company records interest and penalties accrued in relation to uncertain tax benefits as a component of interest expense.

While the Company believes it has identified all reasonably identifiable exposures and that the reserve it has established for identifiable exposures is appropriate under the circumstances, it is possible that additional exposures exist and that exposures may be settled at amounts different than the amounts reserved. It is also possible that changes in facts and circumstances could cause it to either materially increase or reduce the carrying amount of tax reserves. In general, tax returns for the year 2016 and thereafter are subject to future examination by tax authorities.

The Company's policy has been to leave the cumulative unremitted foreign earnings invested indefinitely outside the United States, and it intends to continue this policy. Although the transition tax in the TCJA has removed U.S. federal taxes on distributions to the U.S. on a go forward, the Company continues to assert permanent reinvestment on foreign earnings. Due to the timing and circumstances of repatriation of such earnings, if any, it is not practicable to determine the unrecognized deferred tax liability relating to such amounts.

Standards issued not yet adopted

Standard	Description	Effect on the financial statements
Update 2019-12 - Income Taxes (Topic 740) Simplifying the Accounting for Income Taxes	The ASU removes the exception to the general principles in ASC 740, Income Taxes, associated with the incremental approach for intra-period tax allocation, accounting for basis differences when there are ownership changes in foreign investments and interim-period income tax accounting for year-to-date losses that exceed anticipated losses. In addition, the ASU improves the application of income tax related guidance and simplifies U.S. GAAP when accounting for franchise taxes that are partially based on income, transactions with government resulting in a step-up in tax basis goodwill, separate financial statements of legal entities not subject to tax, and enacted changes in tax laws in interim periods. Different transition approaches, retrospective, modified retrospective, or prospective, will apply to each income tax simplification provision.	The Company is still evaluating these changes and does not anticipate any material impact on the Company's consolidated financial position or results of operations upon adoption.
Date of adoption: January 1, 2021.		

**Foreign Currency**

The functional currency of non-U.S. entities is translated into U.S. dollars for balance sheet accounts using the month end rates in effect as of the balance sheet date and average exchange rate for revenue and expense accounts for each respective period. The translation adjustments are deferred as a separate component of stockholders' equity within accumulated other comprehensive income.

Gains or losses resulting from transactions denominated in foreign currencies are included in other income or expense, within the Consolidated Statements of Operations and were as follows:

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	Twelve Months Ended December 31,		
	2019	2018	2017
Net gain (loss) on foreign currency translations	\$ 31	\$ (478)	\$ (4,952)

***Comprehensive Income (Loss)***

Reporting on comprehensive income requires components of other comprehensive income, including unrealized gains or losses on available-for-sale securities, to be included as part of total comprehensive income. Comprehensive income is comprised of net income, translation adjustments and unrealized gains and losses on available-for-sale securities. The components of comprehensive income are included in the Consolidated Statements of Comprehensive Income (Loss).

***Basic and Diluted Net Income Attributable to Common Stockholders per Common Share***

Basic EPS is computed based upon the weighted average number of common shares outstanding for the year, excluding amounts associated with restricted shares.

Diluted EPS is computed based upon the weighted average number of common shares outstanding for the year plus the potential dilutive effect of common stock equivalents using the treasury stock method and the average market price of the Company's common stock for the year. The potential dilutive effect of common stock includes stock options, convertible debt and unvested restricted stock. The dilutive effects of stock options and restricted stock awards are based on the treasury stock method. The dilutive effect of the assumed conversion of convertible debt is determined using the if-converted method. The after-tax effect of interest expense related to the convertible securities is added back to net income, and the convertible debt is assumed to have been converted into common shares at the beginning of the period.

The Company includes participating securities (Redeemable Convertible Preferred Stock - Participation with Dividends on Common Stock that contain preferred dividend) in the computation of EPS pursuant to the two-class method. The two-class method of computing earnings per share is an allocation method that calculates earnings per share for common stock and participating securities. During periods of net loss, no effect is given to the participating securities because they do not share in the losses of the Company.

***Stock-Based Compensation***

As of December 31, 2019, the Company maintains eight stock-based compensation plans.

The Company utilizes the Black-Scholes pricing model to determine the fair value of stock options on the dates of grant. Restricted stock awards are measured based on the fair market values of the underlying stock on the dates of grant. The Company recognizes stock-based compensation over the requisite service period with an offsetting credit to additional paid-in capital.

For the Company's performance restricted stock awards, the Company estimates the number of shares the recipient is to receive by applying a probability of achieving the performance goals. The actual number of shares the recipient receives is determined at the end of the performance period based on the results achieved versus goals based on the performance targets, such as revenues and earnings before interest, tax, depreciation and amortization ("EBITDA") after certain adjustments. Once the number of awards is determined, the compensation cost is fixed and continues to be recognized using straight line recognition over the requisite service period for each vesting tranche.

During 2017, the Board approved the issuance of performance-based restricted stock to certain executives which are eligible to vest if the volume-weighted average closing price over 20 consecutive trading days equals or exceeds certain stock prices during the specific performance period from July 2017 to July 2019. The Company utilized the Monte Carlo simulation to estimate the fair value of the restricted stock on its grant date.

Use of a valuation model requires management to make certain assumptions with respect to selected model inputs. Expected volatility was calculated based on historical information of the Company's stock. The average expected life was determined using historical stock option exercise activity. The risk-free interest rate is based on U.S. Treasury zero-coupon issues with a remaining

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term equal to the expected life assumed at the date of grant. The Company has never declared or paid cash dividends on the common or preferred equity and does not anticipate paying any cash dividends in the foreseeable future. Forfeitures are accounted for as they occur.

**Recently Issued Accounting Standards**

Recent accounting pronouncements adopted

Standard	Description	Effect on the financial statements
Update 2018-07— Compensation—Stock Compensation (Topic 718): Improvements to Non- employee Share-Based Payment Accounting  Date of adoption: January 1, 2019.	In June 2018, the Financial Accounting Standards Board (“FASB”) issued ASU 2018-07, regarding ASC Topic 718 “Compensation - Stock Compensation,” which largely aligns the accounting for share-based compensation for non-employees with employees. The amendments in this ASU are effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. Early adoption is permitted, but no earlier than an entity’s adoption date of Topic 606.	The adoption of this standard did not have a material effect on the Company’s consolidated financial statements.
ASU 2018-15 Intangibles - Goodwill and Other - Internal Use Software (Subtopic 350-40): Cloud Computing Arrangements  Date of adoption: January 1, 2019.	In August 2018, the FASB issued final guidance requiring a customer in a cloud computing arrangement that is a service contract to follow the internal use software guidance in Accounting Standards Codification (“ASC”) 350-402 Intangibles - Goodwill and Other - Internal Use Software (Subtopic 350-40) to determine which implementation costs to capitalize as assets. The amendments in this ASU are effective for fiscal years beginning after December 15, 2019. Early adoption of the amendments is permitted, including adoption in any interim period, for all entities and should be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption.	The adoption of this standard did not have a material effect on the Company’s consolidated financial statements.

**Revenue**

In May 2014, the FASB issued a new accounting standard related to revenue recognition, ASU 2014-09, “Revenue from Contracts with Customers,” (“Topic 606”). The new standard supersedes the existing revenue recognition requirements under U.S. GAAP and requires entities to recognize revenue when they transfer control of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. It also requires increased disclosures regarding the nature, amount, timing, and uncertainty of revenues and cash flows arising from contracts with customers.

On January 1, 2018, the Company adopted Topic 606 applying the modified retrospective method to all contracts that were not completed as of January 1, 2018. Results for reporting periods beginning after January 1, 2018 are presented under Topic 606, while prior period amounts are not adjusted and continue to be reported under the accounting standards in effect for the prior period. The Company recorded a net reduction to opening retained earnings of approximately \$10.1 million as of January 1, 2018 due to the cumulative impact of adopting Topic 606. The impact to revenues for the year ended December 31, 2018 was an increase of \$29.4 million as a result of adopting Topic 606. The impact to costs was not material.

The impact of adoption primarily relates to (1) the delayed pattern of recognition under Topic 606 for certain professional services revenue when such professional services involve the customization of features and functionality for subscription services customers, and (2) the earlier pattern of recognition under Topic 606 for license revenue when the Company provides hosting services for on-premise license customers. In the case of professional services that involve the customization of features and functionality for subscription services, under historic accounting policies the professional services were considered to have standalone value, and as a result were recognized as the services were performed. Under Topic 606, such professional services are not considered to be a distinct performance obligation within the context of the subscription services contract, and as such each month’s customization services revenue is recognized over the shorter of the estimated remaining life of the subscription software

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(typically three years) or the remaining term of the subscription services contract. In the case of license contracts sold in association with hosting, under historic accounting policies the license revenue was recognized over the hosting term due to the lack of vendor specific objective evidence (“VSOE”) of fair value for the hosting services. Under Topic 606, VSOE is no longer required in order separate revenue between the license and the hosting elements, and the license revenue is generally recognized upon delivery of the software based on the relative allocation of the contract price based on the established standalone selling price (“SSP”).

Additional impacts of adoption include (1) in certain cases changes in the amount allocated to the various performance obligations in accordance with the relative standalone selling price method required by Topic 606 compared to the amount allocated to the various elements in accordance with the residual method or the relative selling price method, as applicable, under historic accounting policies, (2) the capitalization and subsequent amortization of certain sales commissions as costs to obtain a contract under ASC 340-40, whereas under historic accounting policies all such amounts were expensed as incurred (3) the timing and amount of revenue recognition for certain sales contracts that are considered to involve variable consideration under Topic 606, but were considered to either not be fixed or determinable or to involve contingent revenue features under historic accounting policies, (4) in certain limited cases, the accounting for discounted customer options to purchase future software or services as material rights under Topic 606, as well as (5) the income tax impact of the above items, as applicable.

Changes in accounting policies as a result of adopting Topic 606 and nature of goods

The following is a description of principal activities from which the Company generates revenue. Revenues are recognized when control of the promised goods or services are transferred to the Company’s customers, in an amount that reflects the consideration that the Company expects to receive in exchange for those goods or services. The Company generates all of its revenue from contracts with customers.

Subscription and Transaction revenues consist of revenues derived from the processing of transactions through the Company’s service platforms, providing enterprise portal management services on a subscription basis and maintenance agreements on software licenses. The Company generates revenue from Subscription services from monthly active user fees, software as a service (“SaaS”) fees, hosting and storage fees, and fees for the related maintenance support for those services. In most cases, the subscription or transaction arrangement is a single performance obligation comprised of a series of distinct services that are substantially the same and that have the same pattern of transfer (i.e., distinct days of service). The Company applies a measure of progress (typically time-based) to any fixed consideration and allocates variable consideration to the distinct periods of service based on usage, under Topic 606 Section 10-25-14(b). When the Company does not allocate variable consideration to distinct periods of service, the total estimated transaction price is recognized ratably over the term of the contract, where the level of service provided to the customer does not vary significantly from one period to another.

Transaction service arrangements include services such as processing equipment orders, new account set-up and activation, number port requests, credit checks and inventory management.

Transaction revenues are principally based on a contractual price per transaction and are recognized based on the number of transactions processed during each reporting period. Revenues are recorded based on the total number of transactions processed at the applicable price established in the relevant contract.

Many of the Company’s contracts guarantee minimum volume transactions from the customer. In these instances, if the customer’s total estimated transaction volume for the period is expected to be less than the contractual amount, the Company records revenues at the minimum guaranteed amount on a straight line based over the period covered by the minimum. Set-up fees for transactional service arrangements are deferred until set up activities are completed and recognized on a straight-line basis over remaining expected customer relationship period. Revenues are presented net of discounts, which are volume level driven.

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In accordance with Topic 606 Section 10-50-20, any credits due to customers, which are generally performance driven and based upon system availability or response times to incidents, are determined and accounted for in the period in which the services are provided. The Company recognizes revenues from support and maintenance performance obligations over the service delivery period.

The Company's software licenses typically provide for a perpetual or term right to use the Company's software. The Company has concluded that in most cases its software license is distinct as the customer can benefit from the software on its own. Software revenue is typically recognized when the software is delivered to the customer. Contracts that include software customization or specified upgrades may result in the combination of the customization services with the software license as one performance obligation. The Company does not have a history of returns, or refunds of its software licenses, however, in limited instances, the Company may constrain consideration to high-risk customers, until collection is resolved.

The Company's professional services include software development and customization. The contracts generally include project deliverables specified by each customer. The performance obligations in the agreements are generally combined into one deliverable and generally result in the transfer of control over time. The underlying deliverable is owned and controlled by the customer and does not create an asset with an alternative use to us. The Company recognizes revenue on fixed fee contracts on the proportion of labor hours expended to the total hours expected to complete the contract performance obligation.

Most of the Company's contracts with customers contain multiple performance obligations which generally include either 1) a perpetual software license with support and maintenance and sometimes a hosting agreement or 2) a term SaaS agreement, in many cases these are sold along with professional services. For these contracts, the Company accounts for individual goods and services separately if they are distinct performance obligations. This often requires significant judgment based upon knowledge of the products, the solution provided and the structure of the sales contract. In SaaS agreements, the Company provides a service to the customer which combines the software functionality, maintenance and hosting into a single performance obligation when the customer doesn't have the ability to take possession of the underlying software license. The Company may also sell the same three goods and services in a contract, but there may be three performance obligations, where the customer has the right to take possession of the software license without significant penalty.

The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. The Company estimates standalone selling prices of software based on observable inputs of past transactions to similarly situated customers. When such observable data is not available for certain software licenses because there is a limited number of transactions or prices are highly variable, the Company will estimate the standalone selling price using the residual approach. Standalone selling prices of services are typically determined based on observable transactions when these services are sold on a standalone basis to similarly situated customers or estimated using a cost-plus margin approach.

Estimating the transaction price of variable consideration including the variable quantity subscription or transaction contracts in a multiple performance obligation arrangement requires significant judgment. The Company generally estimates this variable consideration at the most likely amount to which the Company expects to be entitled and in certain cases based on the expected value. The Company includes estimated amounts in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved. The Company's estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Company's anticipated performance and all information (historical, current and forecasted) that is reasonably available. The Company reviews and update these estimates on a quarterly basis.

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The Company's typical performance obligations include the following:

<b>Performance Obligation</b>	<b>When Performance Obligation is Typically Satisfied</b>	<b>When Payment is Typically Due</b>	<b>How Standalone Selling Price is Typically Estimated</b>
<b>Software License</b>			
Software License	Upon shipment or made available for download (point in time)	Within 90 days of delivery	Observable transactions or residual approach when prices are highly variable or uncertain
Software License with significant customization	Over the performance of the customization and installation of the software (over time)	Within 90 days of services being performed	Residual approach
Hosting Services	As hosting services are provided (over time)	Within 90 days of services being provided	Estimated using a cost-plus margin approach
<b>Professional Services</b>			
Consulting	As work is performed (over time)	Within 90 days of services being performed	Observable transactions
Customization	SaaS: Over the remaining term of the SaaS agreement  License: Over the performance of the customization and installation of the software (over time)	Within 90 days of services being performed	Observable transactions
<b>Transaction Services</b>	As transaction is processed (over time)	Within 90 days of transaction	Observable transactions
<b>Subscription Services</b>			
Customer Support	Ratably over the course of the support contract (over time)	Within 90 days of the start of the contract period	Observable transactions
SaaS	Over the course of the SaaS service once the system is available for use (over time)	Within 90 days of services being performed	Estimated using a cost-plus margin approach

**Disaggregation of revenue**

The Company disaggregates revenue from contracts with customers into the nature of the products and services and geographical regions. The Company's geographic regions are the Americas, Europe, the Middle East and Africa ("EMEA"), and Asia Pacific ("APAC"). The majority of the Company's revenue is from the Technology, Media and Telecom (collectively, "TMT") sector.

	<b>Twelve Months Ended December 31, 2019</b>				<b>Twelve Months Ended December 31, 2018</b>			
	<b>Cloud</b>	<b>Digital</b>	<b>Messaging</b>	<b>Total</b>	<b>Cloud</b>	<b>Digital</b>	<b>Messaging</b>	<b>Total</b>
<b>Geography</b>								
Americas	\$ 155,076	\$ 46,765	\$ 30,342	\$ 232,183	\$ 153,649	\$ 86,422	\$ 9,603	\$ 249,674
APAC	—	3,658	45,403	49,061	—	5,954	35,397	41,351
EMEA	7,620	3,379	16,506	27,505	8,921	7,018	18,875	34,814
<b>Total</b>	<b>\$ 162,696</b>	<b>\$ 53,802</b>	<b>\$ 92,251</b>	<b>\$ 308,749</b>	<b>\$ 162,570</b>	<b>\$ 99,394</b>	<b>\$ 63,875</b>	<b>\$ 325,839</b>
<b>Service Line</b>								
Professional Services	\$ 14,939	\$ 16,576	\$ 30,923	\$ 62,438	\$ 14,232	\$ 18,383	\$ 11,539	\$ 44,154
Transaction Services	5,606	6,690	—	12,296	9,025	9,706	—	18,731
Subscription Services	141,941	27,577	37,785	207,303	139,100	67,623	33,071	239,794
License	210	2,959	23,543	26,712	213	3,682	19,265	23,160
<b>Total</b>	<b>\$ 162,696</b>	<b>\$ 53,802</b>	<b>\$ 92,251</b>	<b>\$ 308,749</b>	<b>\$ 162,570</b>	<b>\$ 99,394</b>	<b>\$ 63,875</b>	<b>\$ 325,839</b>

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- \* During the period, changes to the STIN business led the Company to conclude that its collection of certain STIN receivables is no longer probable. The Company has updated its collectability assessment in accordance with ASC 842 and concluded that a contingency reserve is required, which included a reduction of digital revenue in America in the amount \$26.0 million. For further details, see *Note 5. Investments in Affiliates and Related Transactions* of the Notes to Consolidated Financial Statements of this Form 10-K.

Trade Accounts Receivable and Contract balances

The Company classifies its right to consideration in exchange for deliverables as either a receivable or a contract asset. A receivable is a right to consideration that is unconditional (i.e. only the passage of time is required before payment is due). For example, the Company recognizes a receivable for revenues related to its time and materials and transaction or volume-based contracts. The Company presents such receivables in Trade accounts receivable, net in its consolidated statements of financial position at their net estimated realizable value. The Company maintains an allowance for doubtful accounts to provide for the estimated amount of receivables that may not be collected. The allowance is based upon an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables and other applicable factors.

A contract asset is a right to consideration that is conditional upon factors other than the passage of time. For example, the Company would record a contract asset if its records revenue on a professional services engagement but are not entitled to bill until the Company achieves specified milestones. Contract asset balance at December 31, 2019 is \$5.3 million.

Amounts collected in advance of services being provided are accounted for as contract liabilities, which are presented as deferred revenue on the accompanying balance sheet and are realized with the associated revenue recognized under the contract. Nearly all of the Company's contract liabilities balance is related to services revenue, primarily subscription services contracts.

The Company's contract assets and liabilities are reported in a net position on a customer basis at the end of each reporting period.

Significant changes in the contract liabilities balance (current and noncurrent) during the period are as follows (in thousands):

	<b>Contract Liabilities*</b>	
Balance - January 1, 2019	\$	116,942
Revenue recognized in the period		(295,817)
Amounts billed but not recognized as revenue		266,674
Balance - December 31, 2019	\$	87,799

- \* Comprised of Deferred Revenue

Revenues recognized during the year ended December 31, 2019 for performance obligations satisfied or partially satisfied in previous periods were immaterial.

Contract acquisition costs

In connection with the adoption of Topic 606 and the related cost accounting guidance under Accounting Standards Codification ("ASC") 340, the Company is required to capitalize certain contract acquisition costs consisting primarily of commissions and bonuses paid when contracts are signed. The Company adopted Topic 606 on January 1, 2018 and capitalized \$0.7 million in contract acquisition costs related to contracts that were not completed. For contracts that have a duration of less than one year, the Company follows a Topic 606 practical expedient and expenses these costs over the estimated customer life, because it does not pay commissions upon renewals that are commensurate with the initial contract. During the year ended December 31, 2019, the amount of amortization was \$0.2 million and there was no impairment loss in relation to costs capitalized.

Contract Fulfillment Costs



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Under ASC 340-40, the Company evaluates whether or not it should capitalize the costs of fulfilling a contract. Such costs would be capitalized when they are not within the scope of other standards and: (1) are directly related to a contract; (2) generate or enhance resources that will be used to satisfy performance obligations; and (3) are expected to be recovered. As of December 31, 2019, the Company had \$5.1 million of capitalized contract fulfillment costs.

Transaction price allocated to the remaining performance obligations

Topic 606 requires that the Company disclose the aggregate amount of transaction price that is allocated to performance obligations that have not yet been satisfied as of December 31, 2019. The Company has elected not to disclose transaction price allocated to remaining performance obligations for:

1. Contracts with an original duration of one year or less, including contracts that can be terminated for convenience without a substantive penalty;
2. Contracts for which the Company recognizes revenues based on the right to invoice for services performed;
3. Variable consideration allocated entirely to a wholly unsatisfied performance obligation or to a wholly unsatisfied promise to transfer a distinct good or service that forms part of a single performance obligation in accordance with Topic 606 Section 10-25-14(b), for which the criteria in Topic 606 Section 10-32-40 have been met. This applies to a limited number of situations where the Company is dependent upon data from a third party or where fees are highly variable.

Many of the Company's performance obligations meet one or more of these exemptions. Specifically, the Company has excluded the following from the Company's remaining performance obligations, all of which will be resolved in the period in which amounts are known:

- consideration for future transactions, above any contractual minimums
- consideration for success-based transactions contingent on third-party data
- credits for failure to meet future service level requirements

As of December 31, 2019, the aggregate amount of transaction price allocated to remaining performance obligations, other than those meeting the exclusion criteria above, was \$215.2 million, of which approximately 87.5% is expected to be recognized as revenues within 2 years, and the remainder thereafter.

Estimates of revenue expected to be recognized in future periods also exclude unexercised customer options to purchase services that do not represent material rights to the customer. Customer options that do not represent a material right are only accounted for in accordance with Topic 606 when the customer exercises its option to purchase additional goods or services.

***Leases***

The Company adopted Accounting Standards Codification Topic 842, Leases (ASC 842) on January 1, 2019. ASC 842 applies to a number of arrangements to which the Company is party whereby the Company acts as a lessee.

Whenever the Company enters into a new arrangement, it must determine, at the inception date, whether the arrangement contains a lease. This determination generally depends on whether the arrangement conveys to the Company the right to control the use of an explicitly or implicitly identified fixed asset for a period of time in exchange for consideration. Control of an underlying asset is conveyed to the Company if the Company obtains the rights to direct the use of and to obtain substantially all of the economic benefits from using the underlying asset.

If a lease exists, the Company must then determine the separate lease and non-lease components of the arrangement. Each right to use an underlying asset conveyed by a lease arrangement should generally be considered a separate lease component if it both: (i) can benefit the Company without depending on other resources not readily available to the Company and (ii) does not significantly affect and is not significantly affected by other rights of use conveyed by the lease. Aspects of a lease arrangement that transfer other goods or services to the Company but do not meet the definition of lease components are considered non-lease components. The consideration owed by the Company pursuant to a lease arrangement is generally allocated to each lease and non-lease component for accounting purposes. However, the Company has elected to not separate lease and non-lease components.

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Each lease component is accounted for separately from other lease components, but together with the associated non-lease components.

For each lease, the Company must then determine:

- The lease term - The lease term is the period of the lease not cancellable by the Company, together with periods covered by: (i) renewal options the Company is reasonably certain to exercise or that are controlled by the lessor and (ii) termination options the Company is reasonably certain not to exercise.
- The present value of lease payments is calculated based on:
  - Lease payments - Lease payments include certain fixed and variable payments, less lease incentives, together with amounts probable of being owed by the Company under residual value guarantees and, if reasonably certain of being paid, the cost of certain renewal options and early termination penalties set forth in the lease arrangement. Lease payments exclude consideration that is: (i) not related to the transfer of goods and services to the Company and (ii) allocated to the non-lease components in a lease arrangement, except for the classes of assets where the Company has elected to not separate lease and non-lease components.
  - Discount rate - The discount rate must be determined based on information available to the Company upon the commencement of a lease. Lessees are required to use the rate implicit in the lease whenever such rate is readily available; however, as the implicit rate in the Company's leases is generally not readily determinable, the Company generally uses the hypothetical incremental borrowing rate it would have to pay to borrow an amount equal to the lease payments, on a collateralized basis, over a timeframe similar to the lease term.
- Lease classification - In making the determination of whether a lease is an operating lease or a finance lease, the Company considers the lease term in relation to the economic life of the leased asset, the present value of lease payments in relation to the fair value of the leased asset and certain other factors, including the lessee's and lessor's rights, obligations and economic incentives over the term of the lease.

Generally, upon the commencement of a lease, the Company will record a lease liability and a right-of-use (ROU) asset. However, the Company has elected, for certain classes of underlying assets with initial lease terms of twelve months or less (known as short-term leases), to not recognize a lease liability or ROU asset. Lease liabilities are initially recorded at lease commencement as the present value of future lease payments. ROU assets are initially recorded at lease commencement as the initial amount of the lease liability, together with the following, if applicable: (i) initial direct costs and (ii) lease payments made, net of lease incentives received, prior to lease commencement.

Over the lease term, the Company generally increases its lease liabilities using the effective interest method and decreases its lease liabilities for lease payments made. The Company generally amortizes its ROU assets over the shorter of the estimated useful life and the lease term and assesses its ROU assets for impairment, similar to other long-lived assets.

For finance leases, amortization expense and interest expense are recognized separately in the Consolidated Statements of Operations, with amortization expense generally recorded on a straight-line basis and interest expense recorded using the effective interest method. For operating leases, a single lease cost is generally recognized in the Consolidated Statements of Operations on a straight-line basis over the lease term. Lease costs for short-term leases not recognized in the Consolidated Balance Sheets are recognized in the Consolidated Statements of Operations on a straight-line basis over the lease term. Variable lease costs not initially included in the lease liability and ROU asset impairment charges are expensed as incurred.

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)" (ASU 2016-02). In July 2018, the FASB issued ASU No. 2018-10, "Codification Improvements to Topic 842, Leases" (ASU 2018-10), which provides narrow amendments to clarify how to apply certain aspects of the new lease standard, and ASU No. 2018-11, "Leases (Topic 842) - Targeted Improvements" (ASU 2018-11), which addresses implementation issues related to the new lease standard. These and certain other lease-related ASUs have generally been codified in ASC 842. ASC 842 supersedes the lease accounting requirements in Accounting Standards Codification Topic 840, Leases (ASC 840), and requires lessees to, among other things, recognize a lease liability, which

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represents the discounted obligation to make future minimum lease payments, and a corresponding right-of-use asset on the balance sheet for most leases.

The Company adopted ASC 842 on January 1, 2019 for leases that existed on that date. The Company has elected to apply the provisions of ASC 842 modified retrospectively at January 1, 2019 through a cumulative-effect adjustment. Prior period results continue to be presented under ASC 840 based on the accounting standards originally in effect for such periods.

The Company has elected certain practical expedients permitted under the transition guidance within ASC 842 to leases that commenced before January 1, 2019, including the package of practical expedients. Due to the Company's election of the package of practical expedients, the Company has carried forward certain historical conclusions for expired or existing contracts, including conclusions relating to initial direct costs and to the existence and classification of leases.

As of January 1, 2019, as a result of adopting ASC 842, the Company recorded a net decrease of \$3.6 million to its Accumulated deficit.

The adoption of ASC 842 did not have a material effect on the Company's Loss from continuing operations or Net loss, or the related per-share amounts, during the year ended December 31, 2019.

Standards issued not yet adopted

Standard	Description	Effect on the financial statements
Update 2018-17-Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities	The update is intended to improve general purpose financial reporting by considering indirect interests held through related parties in common control arrangements on a proportional basis for determining whether fees paid to decision makers and service providers are variable interests. The amendments in ASU 2018-17 will be effective for fiscal years beginning after December 15, 2019, with early adoption permitted.	The Company is currently evaluating the impact of the adoption of this ASU but does not expect that the pending adoption of this ASU will have a material effect on its consolidated financial statements.
Date of adoption: January 1, 2020.		
ASU 2016-13, ASU 2019-4 Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments	In June 2016, the FASB issued ASU 2016-13 which replaces the incurred loss impairment methodology in current U.S. GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The ASU is effective for public companies in annual periods beginning after December 15, 2019, and interim periods within those years. Early adoption is permitted beginning after December 15, 2018 and interim periods within those years.	The Company is currently evaluating the impact of the adoption of this ASU but does not expect that the pending adoption of this ASU will have a material effect on its consolidated financial statements.
Date of adoption: January 1, 2020.		

***Segment and Geographic Information***

The Company's chief operating decision-maker is the Principal Executive Officer, who reviews financial information presented on a consolidated basis for purposes of making operating decisions. However, in assessing financial performance and allocating resources, the Company considers the markets in which it operates. The Company has determined that it currently operates in two business segments: (i) providing cloud solutions and software-based activation for connected devices globally and (ii) enterprise solutions. Given the size of the Company's enterprise segment, and the Company's shift in focus toward the telecommunications, media and technology ("TMT") market, the Company concluded that it has one reportable segment. Although the Company operates in North America, Europe and Asia-Pacific a majority of the Company's revenue and long-lived assets are in the U.S.

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Revenues by geography are based on the billing addresses of the Company's customers. The following tables set forth revenues and property and equipment, net by geographic area:

	Year Ended December 31,		
	2019	2018	2017
Revenues:			
Domestic	\$ 232,183	\$ 249,674	\$ 334,970
Foreign	76,566	76,165	67,391
Total	<u>\$ 308,749</u>	<u>\$ 325,839</u>	<u>\$ 402,361</u>

	Year Ended December 31,	
	2019	2018
Property and equipment, net:		
Domestic	\$ 19,278	\$ 59,054
Foreign	7,247	8,883
Total	<u>\$ 26,525</u>	<u>\$ 67,937</u>

### 3. Acquisitions and Divestitures

#### 2018 Transactions

##### Acquisition

##### **Honeybee**

In May 2018, the Company completed the acquisition of the honeybee software business ("honeybee"), a provider of digital solutions targeted at optimizing the customer experience from Dixons Carphone plc which offers a digital transformation platform that makes it easier for companies to design and launch omni-channel customer journeys. Consideration paid by the Company consisted of approximately \$9.7 million in cash at the time of closing and deferred consideration of \$8.7 million to be paid over the next three years.

Customers of the honeybee platform, such as mobile operators and other communication service providers, can rapidly create and adapt digital sales processes for contact centers, retail stores, and online channels. This helps reduce complexity for the end-user as well as internal employees, while delivering a single customer experience at all touch-points and improved business outcomes such as reduced cost and increased revenue. The acquisition did not have a material impact on the Company's Consolidated Statements of Operations.

##### Divestitures

##### **SNCR, LLC**

On November 16, 2015, the Company formed a venture with Goldman Sachs ("Goldman"), referred to as SNCR, LLC in order to develop and deploy the Synchronoss Secure Mobility Suite, which would include integration of Synchronoss Workspace platform with Goldman's internally developed mobile security intellectual property to help provide a safe, secure mobile device environment that also effectively supports bring your own device ("BYOD").

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During the fourth quarter of 2017, the Company entered into a termination agreement with Goldman to terminate the venture, and provide a perpetual, irrevocable license of the venture's intellectual property for use in Goldman's back-office. As part of the agreement, the Company was relieved of any future obligations to support Goldman's use of the software. The venture formally ended in the first quarter of 2018 resulting in the elimination of the Company's associated noncontrolling interest balance and an increase to additional paid in capital balance of \$12.8 million on the Company's Consolidated Balance Sheet.

### **2017 Transactions**

#### ***Intralinks***

##### Acquisition

On January 19, 2017, the Company purchased all outstanding shares of Intralinks Holdings, Inc. ("Intralinks"). In connection with the acquisition, the Company entered into a \$900.0 million senior secured term loan (the "2017 Term Facility"), as of the date of acquisition. Intralinks is a global technology provider of Software as a service ("SaaS") solutions for secure enterprise content collaboration within and among organizations. Intralinks' cloud-based solutions enable organizations to securely manage, control, track, search, exchange and collaborate on sensitive information inside and outside the firewall. The total purchase price consideration consisted of the repayment of existing Intralinks indebtedness, and non-cash consideration for services rendered on unvested Intralinks equity awards that were converted into the Company equity awards on the acquisition date. The acquisition was primarily funded from the proceeds of the \$900.0 million credit agreement as of the date of acquisition (See *Note 10. Debt* for further discussion regarding the credit agreement). The goodwill recorded in connection with this acquisition was primarily attributed to operating synergies and other benefits expected to result from the combined operations and the assembled workforce acquired. The goodwill acquired is not deductible for tax purposes.

##### Divestitures

On June 23, 2017, the Company received a non-binding indication of interest from Siris Capital Group, LLC ("Siris") to acquire the Company. In light of the indication of interest, the Company's Board of Directors decided to explore a broad range of strategic alternatives that would have the potential to unlock shareholder value. In October 2017, the Company concluded its review of strategic alternatives and determined that the best approach for the Company to achieve its goal of maximizing shareholder value was to focus on its core Telecommunication, Media and Technology ("TMT") business, divest non-core assets and improve the Company's balance sheet strength, cash position and potential profitability. Under the terms of certain definitive agreements, investment funds affiliated with Siris acquired all of the stock of the Company's wholly-owned subsidiary, Intralinks for consideration of cash and an option to investment in convertible preferred equity of the Company.

Subject to the terms and conditions set forth in the Share Purchase Agreement, dated as of October 17, 2017 (the "Share Purchase Agreement"), among Synchronoss, Intralinks and Impala Private Holdings II, LLC, an affiliate of Siris ("Impala"), a related party, due to its significant interest in the Company's common stock. Impala agreed to acquire from the Company the issued and outstanding shares of common stock of Intralinks for approximately \$977.3 million in cash plus a potential contingent payment of up to \$25.0 million, subject to an adjustment for cash, debt and working capital (the "Intralinks Transaction"). The total amount of funds used to complete the Intralinks Transaction and related transactions and pay related fees and expenses was approximately \$1.0 billion, which was funded through a combination of equity and debt financing obtained by Impala.

Under the terms of the Share Purchase Agreement, the Company also provided Siris with a Siris Put Right ("Siris Put Right"), which would allow Silver to put shares held at the time, to Synchronoss at price of \$14.56 per share, or \$87.3 million in the aggregate. The Company determined that the Call option on the issuance of preferred and the Siris Put Right, together, represented one mandatorily redeemable financial instrument with a fair value of \$33.6 million, which reduced the gain on sale of Intralinks.

At the closing of the Intralinks Transaction on November 14, 2017, Impala acquired all of the issued and outstanding shares of Intralinks for approximately \$991.0 million in cash, subject to post-closing adjustments for changes in cash, debt and working capital. If, in the future, Impala receives net cash proceeds in excess of \$440.0 million from any sale of equity or assets of Intralinks, or a dividend or distribution in respect of the shares of Intralinks, then Impala is required to pay the Company up to an additional \$25.0 million in cash or publicly traded securities. Immediately following the consummation of the Intralinks Transaction, the Company paid to Impala \$5.0 million as partial reimbursement of the out-of-pocket fees and expenses incurred by Impala, Siris

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and their respective affiliates in connection with the execution of the Share Purchase Agreement and the Intralinks Transaction. Amounts reimbursed were recorded as a reduction in the gain on sale.

In accordance with the terms of the Share Purchase Agreement dated as of October 17, 2017 (the “PIPE Purchase Agreement”), with Silver Private Holdings I, LLC, an affiliate of Siris (“Silver”), on February 15, 2018, the Company issued to Silver 185,000 shares of its newly issued Series A Convertible Participating Perpetual Preferred Stock (the “Series A Preferred Stock”), par value \$0.0001 per share, with an initial liquidation preference of \$1,000 per share, in exchange for \$97.7 million in cash and the transfer from Silver to us of the 5,994,667 shares of our common stock held by Silver (the “Preferred Transaction”). In connection with the issuance of the Series A Preferred Stock, we (i) filed a Certificate of Designation with the State of Delaware setting forth the rights, preferences, privileges, qualifications, restrictions and limitations on the Series A Preferred Stock (the “Series A Certificate”) and (ii) entered into an Investor Rights Agreement with Silver setting forth certain registration, governance and preemptive rights of Silver with respect to us (the “Investor Rights Agreement”). See *Note 12. Capital Structure* for further discussion.

The following is a summary of the operating results of Intralinks during the year ended December 31, 2017, which have been reflected within income from discontinued operations, net of tax:

	<b>2017</b>
<b>Net revenues</b>	\$ 213,178
Costs and expenses:	
Cost of services	35,393
Research and development	19,148
Selling, general and administrative	114,737
Restructuring	15,995
Depreciation and amortization	41,780
Total costs and expenses	227,053
Other income, net	1,448
Loss from discontinued operations	(12,427)
<b>Gain on sale of discontinued operations</b>	<b>122,842</b>
Income from discontinued operations before taxes	110,415
Provision for income taxes	(34,920)
<b>Discontinued operations, net of taxes</b>	<b>\$ 75,495</b>

The pre-tax gain on sale of Intralinks included in the Consolidated Statement of Operations was \$122.8 million for the year ended December 31, 2017.

The Company signed a Transition Service Agreement (“TSA”) to provide accounting, tax, legal, payroll and IT services for up to six months after the divestiture. Amounts earned under the agreement were reflected as a reduction in Selling, general and administrative expenses in the statement of operations.

### ***SpeechCycle***

On February 1, 2017, the Company completed a divestiture of its SpeechCycle business, to an unrelated third party, for consideration of \$13.5 million.

As part of the divestiture, the Company entered into a one-year transition services agreement with the acquirer to support various indirect activities such as customer software support, technical support services and maintenance and support services. These services were terminated during the first quarter of 2018. The Company recorded a pre-tax gain of \$4.9 million as a result of the divestiture which is included in other income (expense), net in the Consolidated Statement of Operations.

### **Acquisition-Related Costs**

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Total acquisition-related costs recognized during the year ended December 31, 2019, 2018, and 2017 including transaction costs such as legal, accounting, valuation and other professional services, were nil, \$0.1 million and \$13.0 million, respectively, and are included in selling, general and administrative expense in the Consolidated Statements of Operations.

#### 4. Fair Value Measurements

In accordance with accounting principles generally accepted in the United States, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A three-level hierarchy prioritizes the inputs used to measure fair value as follows:

- Level 1 - Observable inputs - quoted prices in active markets for identical assets and liabilities;
- Level 2 - Observable inputs other than the quoted prices in active markets for identical assets and liabilities includes quoted prices for similar instruments, quoted prices for identical or similar instruments in inactive markets, and amounts derived from valuation models where all significant inputs are observable in active markets; and
- Level 3 - Unobservable inputs - includes amounts derived from valuation models where one or more significant inputs are unobservable and require the Company to develop relevant assumptions.

The following is a summary of assets, liabilities and redeemable noncontrolling interests and their related classifications under the fair value hierarchy:

	December 31, 2019			
	Total	(Level 1)	(Level 2)	(Level 3)
<b>Assets</b>				
Cash, cash equivalents and restricted cash <sup>(1)</sup>	\$ 39,001	\$ 39,001	\$ —	\$ —
Marketable securities-short term <sup>(2)</sup>	11	—	11	—
Marketable securities-long term <sup>(2)</sup>	—	—	—	—
<b>Total assets</b>	<b>\$ 39,012</b>	<b>\$ 39,001</b>	<b>\$ 11</b>	<b>\$ —</b>
<b>Liabilities</b>				
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Temporary equity</b>				
Redeemable noncontrolling interests <sup>(3)</sup>	\$ 12,500	\$ —	\$ —	\$ 12,500
<b>Total temporary equity</b>	<b>\$ 12,500</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 12,500</b>

	December 31, 2018			
	Total	(Level 1)	(Level 2)	(Level 3)
<b>Assets</b>				
Cash, cash equivalents and restricted cash <sup>(1)</sup>	\$ 109,860	\$ 109,860	\$ —	\$ —
Marketable securities-short term <sup>(2)</sup>	28,230	—	28,230	—
Marketable securities-long term <sup>(2)</sup>	6,658	—	6,658	—
<b>Total assets</b>	<b>\$ 144,748</b>	<b>\$ 109,860</b>	<b>\$ 34,888</b>	<b>\$ —</b>
<b>Liabilities</b>				
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Temporary Equity</b>				
Redeemable noncontrolling interests <sup>(3)</sup>	\$ 12,500	\$ —	\$ —	\$ 12,500
<b>Total temporary equity</b>	<b>\$ 12,500</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 12,500</b>

<sup>(1)</sup> Cash equivalents primarily included money market funds.

<sup>(2)</sup> Marketable securities are comprised of municipal bonds, certificates of deposit, corporate bonds, treasury bonds, and mutual funds.

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(3) Put arrangements held by the noncontrolling interests in certain of the Company's joint ventures.

**Marketable Securities**

The Company utilizes the market approach to measure fair value for its financial assets. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets. The Company's marketable securities investments classified as Level 2 primarily utilize broker quotes in a non-active market for valuation of these securities. No transfers of assets between Level 1, Level 2 and Level 3 of the fair value measurement hierarchy occurred during the year ended December 31, 2019.

For marketable debt securities, unrealized gains and losses are reported as a component of accumulated other comprehensive income in stockholders' equity. The cost of securities sold is based on the specific identification method. The Company evaluates investments with unrealized losses to determine if the losses are other than temporary. The Company has determined that the gross unrealized losses at December 31, 2019 and 2018 are temporary. In making this determination, the Company considered the financial condition, credit ratings and near-term prospects of the issuers, the underlying collateral of the investments, and the magnitude of the losses as compared to the cost and the length of time the investments have been in an unrealized loss position. Additionally, while the Company classifies the securities as available for sale, the Company does not currently intend to sell such investments and it is more likely than not to recover the carrying value prior to being required to sell such investments.

The marketable equity securities are mutual funds measured at fair value and classified within Level 2 in the fair value hierarchy. Unrealized gains and losses related to the Company's marketable equity securities were recognized in other income (expense), net.

The estimated fair value of investments in marketable debt securities were immaterial and as follows at December 31, 2019 and 2018, respectively:

	December 31, 2018			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>Marketable securities - debt:</b>				
Certificates of deposit	\$ 3,776	\$ —	\$ (16)	\$ 3,760
Corporate bonds	402	—	(1)	401
Municipal bonds	10,913	—	(32)	10,881
Treasury bonds	15,685	—	—	15,685
<b>Total</b>	<b>\$ 30,776</b>	<b>\$ —</b>	<b>\$ (49)</b>	<b>\$ 30,727</b>

At December 31, 2019 and December 31, 2018, the aggregate related fair value of investment with unrealized losses was approximately nil and \$14.9 million respectively.

At December 31, 2019, the estimated fair value of investments in marketable equity securities, were as follows:

Balance at December 31, 2018	\$ 4,161
Mutual funds purchases	51,744
Mutual funds sales	(55,895)
Realized gains (losses)	1
<b>Balance at December 31, 2019</b>	<b>\$ 11</b>

**Redeemable Noncontrolling Interests**

The redeemable noncontrolling interests recorded at fair value are put arrangements held by the noncontrolling interests in certain of the Company's joint ventures. The Company recognizes changes in the redemption value immediately as they occur and adjusts the carrying value of the noncontrolling interest to the greater of the estimated redemption value, which approximates fair value, at the end of each reporting period or the initial carrying amount.



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The fair value of the redeemable noncontrolling interests was estimated by applying an income approach using a discounted cash flow analysis. This fair value measurement is based on significant inputs that are not observable in the market and thus represents a Level 3 measurement. Significant changes in the underlying assumptions used to value the redeemable noncontrolling interests could significantly increase or decrease the fair value estimates recorded in the Consolidated Balance Sheets.

The changes in fair value of the Company's Level 3 redeemable noncontrolling interests during the year ended December 31, 2019 were as follows:

Balance at December 31, 2018	\$ 12,500
Fair value adjustment	(1,126)
Net income attributable to redeemable noncontrolling interests	1,126
Balance at December 31, 2019	<u>\$ 12,500</u>

## 5. Investments in Affiliates and Related Transactions

### *Sequential Technology International, LLC*

In connection with the divestiture of the exception handling business of the Company, Synchronoss entered into a three-year Cloud Telephony and Support services agreement to grant Sequential Technology International, LLC ("STIN") access to certain Synchronoss software and private branch exchange systems to facilitate exception handling operations required to support STIN customers.

For the year ended December 31, 2019 and 2018, the Company recognized \$(6.9) million and \$25.7 million, respectively, in revenue related to Cloud Telephony and Support services, and nil and \$2.1 million, respectively, in revenue related to all other services.

Changes to the STIN business led the Company to conclude that its collection of certain STIN receivables is no longer probable as of December 31, 2019. In accordance with ASC 842, the portion of revenue that is no longer deemed collectible is reversed in the current period against revenue. Accordingly, the Company determined a contingency reserve is required, which included a reduction of revenue in the amount \$26.0 million in the third quarter of 2019. The impacts of this change are reflected in the STIN affiliate revenue and accounts receivable.

The STIN affiliate accounts receivable balances in the Consolidated Balance Sheet as of December 31, 2019 and December 31, 2018, were \$8.1 million and \$27.5 million, respectively. These amounts principally included revenues generated from the Cloud and Telephony Support Services agreement and pass-through of vendor expenses incurred during the transition and assignment of vendor contracts.

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**6. Property and Equipment**

Property and equipment consist of the following:

	December 31,	
	2019	2018
Computer hardware	\$ 214,880	\$ 246,373
Computer software	64,509	64,530
Construction in-progress	—	651
Furniture and fixtures	9,546	9,408
Building	—	8,808
Leasehold improvements	25,768	23,602
	<u>314,703</u>	<u>353,372</u>
Less: Accumulated depreciation	(288,178)	(285,435)
	<u>\$ 26,525</u>	<u>\$ 67,937</u>

Depreciation expense was approximately \$43.5 million, \$55.8 million and \$57.0 million for 2019, 2018, and 2017, respectively. Amortization of property and equipment recorded under capital leases are included in depreciation expense.

The Company capitalized \$3.4 million related to cloud computing arrangements. The Company estimated the useful life for the cloud computing arrangements is 5 years.

**7. Goodwill and Intangibles****Goodwill**

The Company records goodwill which represents the excess of the purchase price over the fair value of assets acquired, including other definite-lived intangible assets. Goodwill is reviewed annually for impairment or upon the occurrence of events or changes in circumstances that would more likely than not reduce the fair value of the reporting unit below its carrying amount.

The following table shows the adjustments to goodwill during 2019 and 2018:

Balance at December 31, 2017	\$	237,303
Acquisitions		2,156
Impairment		(9,100)
Translation adjustments		(5,460)
Balance at December 31, 2018	\$	<u>224,899</u>
Acquisitions		—
Impairment		—
Translation adjustments		(1,930)
Balance at December 31, 2019	\$	<u>222,969</u>

When performing its annual impairment test, the Company compares the fair value of each reporting unit to its carrying amount with the fair values derived from the market approach the income approach. Under the market approach, the Company estimates fair value based on market multiples of revenue and earnings derived from comparable publicly-traded companies with similar operating and investment characteristics as the reporting unit. The Company weights the fair value derived from the market approach depending on the level of comparability of these publicly-traded companies to the reporting unit. When market comparables are not meaningful or not available, the Company estimates the fair value of a reporting unit using only the income approach. Under

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the income approach, the Company estimates the fair value of a reporting unit based on the present value of estimated future cash flows. The Company bases cash flow projections on management's estimates of revenue growth rates and operating margins, taking into consideration industry and market conditions. The Company bases the discount rate on the weighted-average cost of capital adjusted for the relevant risk associated with business-specific characteristics and the uncertainty related to the reporting unit's ability to execute on the projected cash flows.

In order to assess the reasonableness of the estimated fair value of the Company's reporting units, the Company compares the aggregate reporting unit fair value to the Company's market capitalization on an overall basis and calculates an implied control premium (the excess of the sum of the reporting units' fair value over the Company's market capitalization on an overall basis). The Company evaluates the control premium by comparing it to observable control premiums from recent comparable transactions. If the implied control premium is determined to not be reasonable in light of these recent transactions, the Company re-evaluates its reporting unit fair values, which may result in an adjustment to the discount rate and/or other assumptions. This re-evaluation could result in a change to the estimated fair value for certain or all reporting units. If the fair value of a reporting unit exceeds the carrying amount of the net assets assigned to that reporting unit, goodwill is not impaired.

If the fair value of the reporting unit is less than its carrying amount, goodwill is impaired and the excess of the reporting unit's carrying value over the fair value is recognized as an impairment loss.

For the years ended December 31, 2019, 2018, and 2017 the Company recognized goodwill impairment charges of nil, \$9.1 million, and nil, respectively. The Company recorded a \$9.1 million impairment charge on the Zentry joint venture in 2018 as a result of various business changes to Zentry, which ultimately led the Company to sunset certain Zentry product offerings. The Company evaluated the impact of these business changes and determined that the future cash flows generated by the assets were not sufficient to support its recoverability and accordingly, the Company recognized an impairment charge for Zentry's outstanding goodwill.

#### ***Other Intangible Assets***

The Company's intangible assets with definite lives consist primarily of technology, capitalized software, trade names, and customer lists and relationships. These intangible assets are being amortized on the straight-line method over the estimated useful lives of the assets. Amortization expense related to intangible assets for the years ended December 31, 2019, 2018 and 2017 was \$33.5 million, \$41.3 million and \$36.9 million, respectively.

The Company recognized impairment charges to its intangible assets of \$0.0 million, \$11.0 million and \$1.0 million for the years ended December 31, 2019, 2018 and 2017 respectively. The Company includes these impairments within depreciation and amortization in its Consolidated Statements of Operations. The 2018 impairment charge was incurred to the outstanding Zentry intangible assets for the same reasons discussed above.

As of December 31, 2019, the Company had \$6.4 million of capitalized software costs that are currently in the development stage. Amortization of these costs will begin once the software projects are complete and ready for their intended use.

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The Company's intangible assets consist of the following:

	December 31, 2019		
	Cost	Accumulated Amortization	Net
Technology	\$ 99,832	\$ (83,608)	\$ 16,224
Customer lists and relationships	125,308	(86,555)	38,753
Capitalized software and patents	46,222	(23,586)	22,636
Trade name	2,450	(2,450)	—
	<u>\$ 273,812</u>	<u>\$ (196,199)</u>	<u>\$ 77,613</u>

	December 31, 2018		
	Cost	Accumulated Amortization	Net
Technology	\$ 100,896	\$ (73,271)	\$ 27,625
Customer lists and relationships	127,755	(75,123)	52,632
Capitalized software and patents	33,710	(15,261)	18,449
Trade name	2,546	(2,546)	—
	<u>\$ 264,907</u>	<u>\$ (166,201)</u>	<u>\$ 98,706</u>

Estimated future amortization expense of its intangible assets for the next five years is as follows:

Year ending December 31,	
2020	\$ 24,691
2021	17,047
2022	12,606
2023	5,749
2024	5,151
Thereafter	5,973
<b>Total *</b>	<u>\$ 71,217</u>

\* As of December 31, 2019, the Company had \$6.4 million of capitalized software costs that are currently in the development stage. Amortization of these costs will begin once the software projects are complete and ready for their intended use.

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**8. Accrued Expenses**

Accrued expenses consist of the following:

	December 31,	
	2019	2018
Accrued compensation and benefits	\$ 26,507	\$ 26,840
Accrued professional service fees	7,248	8,177
Accrued telecommunications	2,493	1,758
Accrued income taxes payable	4,063	1,394
Accrued preferred dividend	7,873	7,075
Accrued other	17,803	14,301
<b>Total</b>	<b>\$ 65,987</b>	<b>\$ 59,545</b>

**9. Leases**

The Company has entered into contracts with third parties to lease a variety of assets, including certain real estate, equipment, automobiles and other assets. The Company's leases frequently allow for lease payments that could vary based on factors such as inflation or the degree of utilization of the underlying asset. For example, certain of the Company's real estate leases could require us to make payments that vary based on common area maintenance charges, insurance and other charges. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

The Company is party to certain sublease arrangements, primarily related to the Company's real estate leases, where it acts as the lessee and intermediate lessor. The Company does not have material sublease arrangements.

The following table presents information about the Company's ROU assets and lease liabilities at December 31, 2019 (in thousands):

<b>ROU assets:</b>	
Non-current operating lease ROU assets	\$ 53,965
<b>Operating lease liabilities:</b>	
Current operating lease liabilities*	\$ 8,473
Non-current operating lease liabilities	60,976
<b>Total operating lease liabilities</b>	<b>\$ 69,449</b>

\* Amounts are included in Accrued Expenses on Consolidated Balance Sheets.

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The following table presents information about lease expense and sublease income for the year ended December 31, 2019 (in thousands):

	<b>Twelve Months Ended</b>
Operating lease cost*	\$ 13,034
Other lease costs and income:	
Variable lease costs* <sup>(1)</sup>	7,374
Sublease income*	(1,297)
Total net lease cost	\$ 19,111

\* Amounts are included in Cost of revenues, Selling, general and administrative and/or Research and development based on the function that the underlying leased asset supports which are reflected in the Consolidated Statements of Operations.

<sup>(1)</sup> During the third quarter, the Company executed an agreement enabling the Company to achieve data center consolidation moving forward. The Company recorded a \$6.2 million ROU asset impairment based on forecasted future cash flows for those data centers impacted by the agreement.

The following table provides the undiscounted amount of future cash flows included in the Company's lease liabilities at December 31, 2019 for each of the five years subsequent to December 31, 2019 and thereafter, as well as a reconciliation of such undiscounted cash flows to the Company's lease liabilities at December 31, 2019 (in thousands):

	<b>Operating Leases</b>
2020	\$ 13,639
2021	12,932
2022	12,330
2023	10,040
2024	10,139
Thereafter	33,995
Total future lease payments	93,075
Less: amount representing interest	(23,626)
Present value of future lease payments (lease liability)	\$ 69,449

The following table provides the weighted-average remaining lease term and weighted-average discount rates for the Company's leases as of December 31, 2019:

<b>Operating Leases:</b>	
Weighted-average remaining lease term (years), weighted based on lease liability balances	7.63
Weighted-average discount rate (percentages), weighted based on the remaining balance of lease payments	8.0%

The following table provides certain cash flow and supplemental noncash information related to the Company's lease liabilities for the year ended December 31, 2019 (in thousands):

<b>Operating Leases:</b>	
Cash paid for amounts included in the measurement of lease liabilities	\$ 12,427
Lease liabilities arising from obtaining right-of-use assets	895

## 10. Debt

### 2019 Revolving Credit Facility

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On October 4, 2019, the Company entered into a Credit Agreement with Citizens Bank, N.A., for a \$10.0 million Revolving Credit Facility. Borrowings under the Revolving Credit Facility bear interest at a rate equal to, at the Company's option, either (1) the arithmetic average of the LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period (one, three or six months (or 12 months if agreed to by all applicable Lenders)) as selected by the Company relevant to such borrowing plus the applicable margin, or (2) a base rate determined by reference to the greatest of the federal funds rate plus 0.50%, the prime commercial lending rate as determined by the Agent, and the daily LIBOR rate plus 1.00%, in each case plus an applicable margin and subject to a floor of 0.00%. In addition, on a quarterly basis, the Company is required to pay each lender under the Revolving Credit Facility a 0.2% commitment fee in respect of commitments under the Revolving Credit Facility, which may be subject to adjustment based on the Company's total leverage ratio. The outstanding balance under the Revolving Credit Facility as of December 31, 2019 is zero.

The outstanding debt balance is nil at December 31, 2019 and the balance at December 31, 2018 was as follows:

	<b>December 31, 2018</b>
Convertible Senior Notes	\$ 113,980
Amended Credit Agreement	—
<b>Total debt, principal amount</b>	<b>113,980</b>
Unamortized debt issuance cost <sup>(1)</sup>	(438)
<b>Total debt, carrying value</b>	<b>\$ 113,542</b>
Total short-term debt, carrying value	\$ 113,542
<b>Total long-term debt, carrying value</b>	<b>\$ —</b>

<sup>(1)</sup> Unamortized debt issuance cost is related to Convertible Senior Notes.

#### **Convertible Senior Notes**

On August 12, 2014, the Company issued \$230.0 million aggregate principal amount of its 0.75% Convertible Senior Notes due in 2019 (the "2019 Notes"). The 2019 Notes were paid at maturity on August 15, 2019. The 2019 Notes bore an interest rate of 0.75% per annum payable semi-annually in arrears on February 15 and August 15 of each year. The Company accounted for the \$230.0 million face value of the debt as a liability and capitalized approximately \$7.1 million of financing fees, related to the issuance which are presented net of the face value of the 2019 Notes on the Consolidated Balance Sheets.

The 2019 Notes were senior, unsecured obligations of the Company, and were convertible into shares of its common stock based on a conversion rate of 18.8072 shares per \$1,000 principal amount of 2019 Notes which is equivalent to an initial conversion price of approximately \$53.17 per share. The 2019 Notes were convertible at the note holders' option prior to their maturity and if specified corporate transactions occur. The issue price of the 2019 Notes was equal to their face amount. As of the maturity date, none of the 2019 Notes were converted to common stock.

Holders of the 2019 Notes who converted their notes in connection with a qualifying fundamental change, as defined in the related indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, following the occurrence of a fundamental change, holders may require that the Company repurchase some or all of the 2019 Notes for cash at a repurchase price equal to 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest, if any. As of the maturity date of the 2019 Notes, none of these conditions existed.

Included in the definition of a fundamental change is whether the Company's common stock ceases to be listed or quoted on Nasdaq. In May 2018, trading of the Company's common stock was suspended on Nasdaq, however, it was not delisted. On September 26, 2018, the Company received notice, that the Nasdaq Listing Qualifications Staff (the "Staff") approved the listing of its common stock on Nasdaq. The result of this approval caused the suspension of trading in Company's common stock on The Nasdaq Stock Market to be lifted. On November 2, 2018, the Company retired approximately \$116.0 million of the 2019 Notes as part of a settlement agreement entered into on November 1, 2018, among the Company, Indaba Capital Fund, L.P and Westwood Management Corp. related to the BNY Action and, as a result the parties filed a stipulation of dismissal of the BNY Action. For additional information regarding this litigation, see Item 3. "Legal Proceedings" contained in this Form 10-K.

The 2019 Notes were the Company's direct senior unsecured obligations and rank equal in right of payment to all of the Company's existing and future unsecured and unsubordinated indebtedness.

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During the years ended December 31, 2019, 2018 and 2017, interest expense for the Company's 2019 Notes related to the contractual interest coupon was \$0.4 million, \$1.6 million, and \$1.7 million respectively.

The Company is required to meet all SEC filing requirements and deadlines to be compliant with the 2019 Notes. In the event that the Company does not meet the filing requirements, the Company will be in default under the 2019 Notes unless it elects to pay the noteholders additional interest of 0.25% up to 180 days from the date of the notice of default and 0.50% thereafter up to 360 days. The Company may agree to pay additional interest to the holders by notifying holders and the trustee within 90 days from the notice of default. If the Company decides to pay the additional interest but has not remedied its failure to meet all SEC filing requirements within 360 days from the notice of default, it will be in default. If the Company fails to elect to pay the additional interest, it will be in default if it does not remedy its failure to meet all SEC filing requirements within the 90 days from the notice of default.

The Company received a notice of default from holders of more than 25% of the outstanding principal amount of the 2019 Notes on October 13, 2017. In accordance with the terms of the 2019 Notes, the Company elected to begin paying additional interest starting January 11, 2018 (the 90<sup>th</sup> day following the Company's receipt of the notice of default). As a result of the Company regaining compliance with its SEC filing requirements, the Company was no longer required to pay the additional interest as of July 9, 2018. The Company was required to record a derivative related to this contingent interest as a liability and expense in its financial statements due to the late filings of the Company's quarterly reports on Form 10-Q in 2017. At December 31, 2018, the recorded contingent interest derivative liability within accrued expenses was zero as a result of Company regaining compliance with its SEC filing requirements.

#### **2019 Notes Notice**

On June 13, 2018, The Bank of New York Mellon, in its capacity as trustee (the "Trustee") under the indenture dated as of August 12, 2014 (the "Indenture") governing for the 2019 Notes, filed a verified complaint with the Court of Chancery of the State of Delaware, captioned The Bank of New York Mellon, as Indenture Trustee v. Synchronoss Technologies, Inc. (the "BNY Action"). The BNY Action complaint alleges that a "Fundamental Change" has occurred under the Indenture as a result of the Company's Common Stock ceasing to be listed or quoted on Nasdaq and that an event of default under the Indenture has occurred as a result of the Company's failure to provide a notice of such Fundamental Change which, if true, following notice from holders of more than 25% of the outstanding principal under the Notes would trigger the acceleration of the principal and interest outstanding under the 2019 Notes, which otherwise mature on August 15, 2019. On November 2018, the parties filed a stipulation of dismissal of the BNY Action. For further details, see *Note 18. Legal Matters*.

On November 2, 2018, the Company retired \$116.0 million of 2019 Notes as a part of settlement agreement entered into on November 1, 2018, among the Company, Indaba Capital Fund, L.P. ("Indaba") and Westwood Management Corp. ("Westwood") related to the BNY Action. For further details see *Note 18. Legal Matters*. At December 31, 2019, the carrying amount of the liability was zero and the outstanding principal of the 2019 Notes was zero.

#### **2017 Credit Agreement**

On January 19, 2017, the Company entered into a credit agreement with the lending institutions from time to time parties thereto and Goldman Sachs as administrative agent, collateral agent, swingline lender and a letter of credit issuer (as amended from time to time, the "2017 Credit Agreement") which was comprised of a \$900.0 million term credit facility with a maturity date of January 19, 2024 (the "2017 Term Facility") and a revolving credit facility of up to \$200.0 million (the "Revolving Facility") with a maturity date of January 19, 2022. Obligations under the 2017 Credit Agreement were guaranteed by certain of the Company's subsidiaries and secured by substantially all of the Company's and its subsidiaries' assets.

The 2017 Term Facility amortized at 1% per annum in equal quarterly installments with the balance payable on the maturity date. The Revolving Facility included borrowing capacity available for letters of credit and for borrowings on same-day notice under swingline loans and borrowing thereunder could be used for working capital needs and other general corporate purposes.

The 2017 Term Facility initially bore interest at a rate equal to, at the Company's option, the adjusted LIBOR rate for an applicable interest period or an alternate base rate, in each case, plus an applicable margin of 2.75% or 1.75%, respectively. The Revolving Facility initially bore an interest at a rate equal to, at the Company's option, the adjusted LIBOR rate or an alternate base rate, in each case, plus an applicable margin of 2.50% or 1.50%, respectively, subject to step-downs based on the Company's



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ratio of first lien secured debt to adjusted EBITDA, as defined in the 2017 Credit Agreement. The Company paid a commitment fee in the range of 0.25% to 0.375% on the unused balance of the Revolving Facility. Interest was payable quarterly under the 2017 Credit Agreement.

Subject to certain customary exceptions, the 2017 Term Facility was subject to mandatory prepayments in amounts equal to: (1) 100% of the net cash proceeds from any non-ordinary course sale or other disposition of assets (including as a result of casualty or condemnation) by Synchronoss or its subsidiaries subject to customary reinvestment provisions and certain other exceptions; (2) 100% of the net cash proceeds from incurrences of debt (other than permitted debt); and (3) a customary annual excess cash flow sweep at levels based on the Company's applicable ratio of first lien secured debt to adjusted EBITDA, as defined in the 2017 Credit Agreement.

The 2017 Credit Agreement contained a number of customary affirmative and negative covenants and events of default, which, among other things, restricted the Synchronoss' and its subsidiaries' ability to incur debt, allow liens on assets, make investments, pay dividends or prepay certain other debt. The 2017 Credit Agreement also required Synchronoss to comply with certain financial maintenance covenants, including a total gross leverage ratio and an interest charge coverage ratio.

Certain of the lenders under the 2017 Credit Agreement, or their affiliates, provided, and may in the future from time to time provide, certain commercial and investment banking, financial advisory and other services in the ordinary course of business for the registrant and its affiliates, for which they have in the past and may in the future receive customary fees and commissions.

As a result of the Company's restatement, it was unable to comply with covenants requiring the timely delivery of audited financial statements and interim financial information. The Company obtained waivers to extend the dates by which the Company was required to deliver such financial information to June 30, 2017.

Waiver Agreement to 2017 Credit Agreement

On June 30, 2017, the Company, the Lenders and the Administrative Agent entered into a Limited Waiver to Credit Agreement (the "Waiver Agreement") pursuant to which the Lenders agreed, subject to the limitations contained in the Waiver Agreement, to temporarily waive (the "Limited Waiver") the anticipated event of default (the "Anticipated Event of Default") resulting from the Company's failure to deliver its first quarter 2017 financial statements, together with related items required under the 2017 Credit Agreement on or prior to June 30, 2017. In the absence of the Limited Waiver, after the occurrence of the Anticipated Event of Default the Lenders would be permitted to exercise their rights and remedies available to them under the 2017 Credit Facility with respect to an event of default. The Limited Waiver was designed to give the Company and the Lenders additional time to negotiate in good faith and document certain amendments to the 2017 Credit Facility.

As consideration for the Limited Waiver, the Company agreed to pay a consent fee to each Lender who consented to the Waiver Agreement in an amount equal to 0.15% of the aggregate principal amount of such consenting Lender's revolving credit commitments and term loans outstanding under the 2017 Credit Agreement, which amount was credited against any consent fee that was required to be paid in connection with any subsequent waiver of the Anticipated Event of Default or related amendment of the 2017 Credit Agreement. In addition, the Company paid the reasonable fees and expenses of counsel and other costs and expenses requested by the Administrative Agent on behalf of the Lenders and certain other fees as set forth in the Waiver Agreement.

First Amendment to 2017 Credit Agreement

On July 19, 2017, the Company entered into a first amendment and limited waiver to the 2017 Credit Agreement (the "First Amendment"). Pursuant to the First Amendment, the lenders and administrative agent agreed to extend the time period for delivery by the Company of its quarterly financial statements for the quarters ended March 31, 2017 and June 30, 2017 (the "2017 Quarterly Financial Statements") and to waive the default and event of default arising from the Company's failure to deliver the 2017 Quarterly Financial Statements within the timeframe originally required by the 2017 Credit Agreement (or, at the Company's election, November 16, 2017, if prior to October 17, 2017 the Company pays a fee to the Lenders equal to 25 basis points on the aggregate principal amount of revolving commitments and terms loans outstanding).

The First Amendment effected various other changes to the terms of the Credit Agreement, including reducing revolving credit commitments from \$200.0 million to \$100.0 million (with a sub-limit on usage of \$50.0 million until the earliest date by which the Company has delivered the 2017 Quarterly Financial Statements, the restated financial statements for the fiscal years ended

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December 31, 2016 and 2015 (and the respective quarterly periods) and certain information with respect to disclosing and remedying any material weaknesses in the Company's internal control structure related to financial reporting.)

Under the First Amendment, the Company was required to maintain a first lien secured net leverage ratio of no more than (x) 5.50 to 1 for any period ending from September 30, 2017 through March 31, 2019; (y) 5.00 to 1 for any period ending June 30, 2019 through December 31, 2019; and (z) 4.25 to 1 for any period ending March 31, 2020 and thereafter. The Company was also required to maintain a minimum interest coverage ratio of no less than 2.00 to 1.

Until the earlier of (A) the later of (i) December 15, 2017 and (ii) in the event that, prior to December 15, 2017, the Company has publicly announced a strategic transaction, or merger, business combination, acquisition or divestiture that would result in a change of control or a requirement to prepay the loans and terminate commitments under the Amended Credit Agreement, the date on which such transaction is consummated or abandoned (the "Initial Period End Date") and (B) June 15, 2018, term loans under the Amended Credit Agreement bear interest at a rate equal to, at the Company's option, the adjusted LIBOR rate for an applicable interest period or an alternate base rate (subject to a floor of 1.00% and 2.00%, respectively), in each case, plus an applicable margin of 4.50% or 3.50%, respectively. Thereafter, the applicable margins increase to 5.75% and 4.75%, respectively, if the Company's first lien secured net leverage ratio is less than or equal to 5.00 to 1, and to 6.75% and 5.75%, respectively, if the Company's first lien secured net leverage ratio is greater than 5.00 to 1. The foregoing applicable margins are subject to a retroactive increase of 0.25% each if the Restated Financial Statements show an amount of net revenue for any fiscal year ended December 31, 2015, December 31, 2016 and, if applicable, December 31, 2014 that varies by greater than 15% of the net revenue set forth on Consolidated Balance Sheets and related Consolidated Statements of Operations of the Company for such fiscal year that had originally been filed with the Securities and Exchange Commission.

Until the Initial Period End Date, revolving loans under the Amended Credit Agreement bear interest at a rate equal to, at Company's option, the adjusted LIBOR rate or an alternate base rate (subject to a floor of 1.00% and 2.00%, respectively), in each case, plus an applicable margin of 4.50% or 3.50%, respectively. Thereafter, the applicable margins will be subject to step-downs based on the Company's first lien secured net leverage ratio.

Until the Initial Period End Date, term loans under the Amended Credit Agreement are subject to a prepayment premium of 1.00% solely if prepaid with proceeds of a repricing transaction. Thereafter, the term loans will be subject to (x) a 2.00% prepayment premium for any voluntary prepayments (including upon a change of control) made through the one-year anniversary of the Initial Period End Date and (y) a 1.00% prepayment premium for any voluntary prepayments (including upon a change of control) made after the one-year anniversary of the Initial Period End Date and prior to the second anniversary thereof.

The Amendment also effected various other changes to the baskets and exceptions under the negative covenants of the Credit Agreement.

The Company's effective interest rate on the term loans was approximately 4.08% prior to the First Amendment and ranged from 5.74% to 5.76% from July 19, 2017 through November 2017. During 2017, the Company paid approximately \$16.8 million in fees related to obtaining waivers, amendments, and consents in relation to the 2017 Credit Agreement as a result of the delay in the delivery of the 2017 Quarterly Financial Statements. These costs were recognized within the Interest expense line of the Consolidated Statements of Operations until the debt was repaid in the fourth quarter of 2017. The remaining balance was recognized within the Extinguishment of debt line item of the Consolidated Statements of Operations.

#### Repayment of 2017 Credit Agreement

In connection with the consummation of the Intralinks divestiture (See *Note 3. Acquisitions and Divestitures*), the Company utilized a portion of the proceeds from the Intralinks divestiture to repay all outstanding obligations under the 2017 Credit Agreement. In connection therewith, the Company delivered all notices and took all other actions to facilitate and cause the termination of the 2017 Credit Agreement, the repayment in full of all obligations then outstanding thereunder and the release of any security interests in connection therewith, effective as of November 14, 2017. The aggregate payoff amount was approximately \$897.5 million and included all accrued interest, fees and prepayment penalties associated therewith. The Company incurred approximately \$29.4 million of a loss on the extinguishment of the 2017 Credit Agreement for the year ended December 31, 2017.

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**Amended Credit Facility**

On July 7, 2016, the Company entered into an Amended Credit Facility with Wells Fargo Bank, National Association, as administrative agent and several lenders party thereto (the “Amended Credit Facility”). The Amended Credit Facility, was permitted to be used for general corporate purposes, was a \$250.0 million unsecured revolving line of credit that was set to mature on July 7, 2021, subject to terms and conditions set forth therein. The Company paid a commitment fee in the range of 15 to 30 basis points on the unused balance of the revolving credit facility under the Amended Credit Facility. Synchronoss had the right to request an increase in the aggregate principal amount of the Amended Credit Facility up to \$350.0 million. Interest on the borrowings ranged from 1.94% to 2.03%.

On January 19, 2017, the Company repaid all outstanding obligations under the Amended Credit Facility with Wells Fargo Bank and the several lenders party thereto. The aggregate payoff amount was \$29.0 million and included all accrued interest and associated prepayment penalties.

**Interest expense**

The following table summarizes the Company’s interest expense:

	Twelve Months Ended December 31,		
	2019	2018	2017
<b>Amended Credit Facility</b>			
Amortization of debt issuance costs	\$ —	\$ —	\$ 748
Commitment fee	—	—	25
Interest on borrowings	—	—	24
<b>2017 Term Facility</b>			
Amortization of debt issuance costs	—	—	2,915
Interest on borrowings	—	—	35,327
Contingent Interest Derivative	—	—	2,489
Amendment fees paid to third parties	—	—	5,716
<b>Revolving Facility</b>			
Amortization of debt issuance costs	—	—	646
Commitment fee	—	—	494
Amendment fees paid to third parties	—	—	1,662
<b>Convertible Senior Notes</b>			
Amortization of debt issuance costs	\$ 285	\$ 1,294	1,413
Interest on borrowings	363	1,578	1,725
Additional interest on default	—	191	193
<b>2019 Revolving Credit Facility</b>			
Amortization of debt issuance costs	8	—	—
Commitment fee	5	—	—
Interest on borrowings	3	—	—
Capital leases	—	964	971
Other	691	884	1,423
<b>Total</b>	<b>\$ 1,355</b>	<b>\$ 4,911</b>	<b>\$ 55,771</b>

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**11. Accumulated Other Comprehensive (Loss) / Income**

The changes in accumulated other comprehensive (loss) income during the years ended December 31, were as follows:

	Balance at December 31, 2018	Other comprehensive loss	Tax effect	Balance at December 31, 2019
Foreign currency	\$ (26,436)	\$ (1,768)	\$ —	\$ (28,204)
Unrealized loss on intra-entity foreign currency transactions	(3,906)	(579)	179	(4,306)
Unrealized holding losses on marketable debt securities	(41)	(710)	—	(751)
Total	<u>\$ (30,383)</u>	<u>\$ (3,057)</u>	<u>\$ 179</u>	<u>\$ (33,261)</u>
	Balance at December 31, 2017	Other comprehensive loss	Tax effect	Balance at December 31, 2018
Foreign currency	\$ (20,284)	\$ (6,152)	\$ —	\$ (26,436)
Unrealized loss on intra-entity foreign currency transactions	(3,085)	(1,263)	442	(3,906)
Unrealized holding losses on marketable debt securities	(4)	(37)	—	(41)
Total	<u>\$ (23,373)</u>	<u>\$ (7,452)</u>	<u>\$ 442</u>	<u>\$ (30,383)</u>
	Balance at December 31, 2016	Other comprehensive income	Tax effect	Balance at December 31, 2017
Foreign currency	\$ (37,311)	\$ 17,027	\$ —	\$ (20,284)
Unrealized income (loss) on intra-entity foreign currency transactions	(5,017)	3,322	(1,390)	(3,085)
Unrealized holding gains (losses) on marketable debt securities	(22)	28	(10)	(4)
Total	<u>\$ (42,350)</u>	<u>\$ 20,377</u>	<u>\$ (1,400)</u>	<u>\$ (23,373)</u>

**12. Capital Structure**

As of December 31, 2019, the Company's authorized capital stock was 110 million shares of stock with a par value of \$0.0001, of which 100 million shares were designated as common stock and 10 million shares were designated as preferred stock. There were no significant changes to Company's authorized capital stock and preferred stock during the year ended December 31, 2019.

**Common Stock**

Each holder of common stock is entitled to vote on all matters and is entitled to one vote for each share held. Dividends on common stock will be paid when, and if, declared by the Company's Board of Directors. No dividends have ever been declared or paid by the Company.

**Treasury Stock**

On February 4, 2016, the Company announced that the Board of Directors approved a share repurchase program under which the Company may repurchase up to \$100.0 million of its outstanding common stock for 12 to 18 months following the announcement. In 2016, the Company repurchased approximately 1.3 million shares of the Company's common stock under this program for an aggregate repurchase price of \$40.0 million. There were no share repurchases subsequent to 2016. In 2018, in connection with execution of the Share Purchase Agreement, the Company received 5,994,667 shares of Synchronoss common stock, which have been recorded as Treasury shares as of December 31, 2019. Additionally, in 2018 the Company retired 3.9 million shares of Common Stock that were previously repurchased in prior years. Any related additional paid in capital and par values were removed from the Common Stock numbers.

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### ***Preferred Stock***

The Board of Directors is authorized to issue preferred shares and has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of preferred stock.

In accordance with the terms of the Share Purchase Agreement dated as of October 17, 2017 (the “PIPE Purchase Agreement”), with Silver Private Holdings I, LLC, an affiliate of Siris (“Silver”), on February 15, 2018, the Company issued to Silver 185,000 shares of its newly issued Series A Convertible Participating Perpetual Preferred Stock (the “Series A Preferred Stock”), par value \$0.0001 per share, with an initial liquidation preference of \$1,000 per share, in exchange for \$97.7 million in cash and the transfer from Silver to the Company of the 5,994,667 shares of the Company’s common stock held by Silver (the “Preferred Transaction”).

As of December 31, 2019, there were 217,186 shares of Series A Preferred Stock outstanding, including the initial issuance of 185,000 shares of Series A Preferred Stock and the issuance of 32,186 shares of Series A Preferred Stock as dividends.

In accordance with the terms of the PIPE Purchase Agreement with Silver on February 15, 2018, Silver exercised its option to complete the Preferred Transaction. In connection with the issuance of the Series A Preferred Stock, the Company (i) filed the certificate of designations to its certificate of incorporation to establish the rights, preferences, privileges, qualifications, restrictions and limitations of the Series A Preferred Stock (the “Series A Certificate”) and (ii) entered into the Investor Rights Agreement setting forth certain registration, governance and preemptive rights of Silver with respect to Synchronoss. Pursuant to the PIPE Purchase Agreement, at the closing, the Company paid to Siris \$5.0 million as a reimbursement of Silver’s reasonable costs and expenses incurred in connection with the Preferred Transaction. In connection with execution of the Preferred Transaction, Silver delivered 5,994,667 shares of Synchronoss common stock, which have been recorded as Treasury shares as of December 31, 2019.

### **Certificate of Designation of the Series A Preferred Stock**

The rights, preferences, privileges, qualifications, restrictions and limitations of the shares of Series A Preferred Stock are set forth in the Series A Certificate. Under the Series A Certificate, the holders of the Series A Preferred Stock are entitled to receive, on each share of Series A Preferred Stock on a quarterly basis, an amount equal to the dividend rate of 14.5% divided by four and multiplied by the then-applicable Liquidation Preference (as defined in the Series A Certificate) per share of Series A Preferred Stock (collectively, the “Preferred Dividends”). The Preferred Dividends are due on January 1, April 1, July 1 and October 1 of each year (each, a “Series A Dividend Payment Date”). The Company may choose to pay the Preferred Dividends in cash or in additional shares of Series A Preferred Stock. In the event the Company does not declare and pay a dividend in-kind or in cash on any Series A Dividend Payment Date, the unpaid amount of the Preferred Dividend will be added to the Liquidation Preference. In addition, the Series A Preferred Stock participates in dividends declared and paid on shares of the Company’s common stock.

Each share of Series A Preferred Stock is convertible, at the option of the holder, into the number of shares of common stock equal to the “Conversion Price” (as that term is defined in the Series A Certificate) multiplied by the then applicable “Conversion Rate” (as that term is defined in the Series A Certificate). Each share of Series A Preferred Stock is initially convertible into 55.5556 shares of common stock, representing an initial “conversion price” of approximately \$18.00 per share of common stock. The Conversion Rate is subject to equitable proportionate adjustment in the event of stock splits, recapitalizations and other events set forth in the Series A Certificate.

On and after the fifth anniversary of February 15, 2018, holders of shares of Series A Preferred Stock have the right to cause the Company to redeem each share of Series A Preferred Stock for cash in an amount equal to the sum of the current liquidation preference and any accrued dividends. Each share of Series A Preferred Stock is also redeemable at the option of the holder upon the occurrence of a “Fundamental Change” (as that term is defined in the Series A Certificate) at a specified premium (“Liquidation Value”). In addition, the Company is also permitted to redeem all outstanding shares of the Series A Preferred Stock at any time (i) within the first 30 months of the date of issuance for the sum of the then-applicable Liquidation Preference, accrued but unpaid dividends and a make whole amount (known as “Redemption Value”) and (ii) following the 30-month anniversary of the date of issuance for the sum of the then-applicable Liquidation Preference and the accrued but unpaid dividends. As of December 31, 2019, the Liquidation Value and Redemption Value of the Preferred Shares was \$243.1 million.

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The holders of a majority of the Series A Preferred Stock, voting separately as a class, are entitled at each of the Company's annual meetings of stockholders or at any special meeting called for the purpose of electing directors (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting): (i) to nominate and elect two members of the Company's Board of Directors for so long as the Preferred Percentage (as defined in the Series A Certificate) is equal to or greater than 10%; and (ii) to nominate and elect one member of the Company's Board of Directors for so long as the Preferred Percentage is equal to or greater than 5% but less than 10%.

For so long as the holders of shares of Series A Preferred Stock have the right to nominate at least one director, the Company is required to obtain the prior approval of Silver prior to taking certain actions, including: (i) certain dividends, repayments and redemptions; (ii) any amendment to the Company's certificate of incorporation that adversely affects the rights, preferences, privileges or voting powers of the Series A Preferred Stock; (iii) issuances of stock ranking senior or equivalent to shares of Series A Preferred Stock (including additional shares of Series A Preferred Stock) in the priority of payment of dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Company; (iv) changes in the size of the Company's Board of Directors; (v) any amendment, alteration, modification or repeal of the charter of the Company's Nominating and Corporate Governance Committee of the Board of Directors and related documents; and (vi) any change in the Company's principal business or the entry into any line of business outside of the Company's existing lines of businesses. In addition, in the event that the Company is in EBITDA Non-Compliance (as defined in the Series A Certificate) or the undertaking of certain actions would result in the Company exceeding a specified pro forma leverage ratio, then the prior approval of Silver would be required to incur indebtedness (or alter any debt document) in excess of \$10.0 million, enter or consummate any transaction where the fair market value exceeds \$5.0 million individually or \$10.0 million in the aggregate in a fiscal year or authorize or commit to capital expenditures in excess of \$25.0 million in a fiscal year.

Each holder of Series A Preferred Stock has one vote per share on any matter on which holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent. The holders of Series A Preferred Stock are permitted to take any action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or electronic transmission of the holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders. In addition to any vote (or action taken by written consent) of the holders of the shares of Series A Preferred Stock as a separate class provided for in the Series A Certificate or by the General Corporation Law of the State of Delaware, the holders of shares of the Series A Preferred Stock are entitled to vote with the holders of shares of common stock (and any other class or series that may similarly be entitled to vote on an as-converted basis with the holders of common stock) on all matters submitted to a vote or to the consent of the stockholders of the Company (including the election of directors) as one class.

Under the Series A Certificate, if Silver and certain of its affiliates have elected to effect a conversion of some or all of their shares of Series A Preferred Stock and if the sum, without duplication, of (i) the aggregate number of shares of the Company's common stock issued to such holders upon such conversion and any shares of the Company's common stock previously issued to such holders upon conversion of Series A Preferred Stock and then held by such holders, plus (ii) the number of shares of the Company's common stock underlying shares of Series A Preferred Stock that would be held at such time by such holders (after giving effect to such conversion), would exceed the 19.9% of the issued and outstanding shares of the Company's voting stock on an as converted basis (the "Conversion Cap"), then such holders would only be entitled to convert such number of shares as would result in the sum of clauses (i) and (ii) (after giving effect to such conversion) being equal to the Conversion Cap (after giving effect to any such limitation on conversion). Any shares of Series A Preferred Stock which a holder has elected to convert but which, by reason of the previous sentence, are not so converted, will be treated as if the holder had not made such election to convert and such shares of Series A Preferred Stock will remain outstanding. Also, under the Series A Certificate, if the sum, without duplication, of (i) the aggregate voting power of the shares previously issued to Silver and certain of its affiliates held by such holders at the record date, plus (ii) the aggregate voting power of the shares of Series A Preferred Stock held by such holders as of such record date, would exceed 19.99% of the total voting power of the Company's outstanding voting stock at such record date, then, with respect to such shares, Silver and certain of its affiliates are only entitled to cast a number of votes equal to 19.99% of such total voting power. The limitation on conversion and voting ceases to apply upon receipt of the requisite approval of holders of the Company's common stock under the applicable listing standards.

#### Investor Rights Agreement

Concurrently with the closing of the Preferred Transaction, Synchronoss and Silver entered into an Investor Rights Agreement. Under the terms of the Investor Rights Agreement, Silver and Synchronoss have agreed that, effective as of the closing of the Preferred Transaction, the Board of Directors of Synchronoss will consist of ten members. From and after the closing of the

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Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate a member to the Board of Directors pursuant to the Series A Certificate, the Board of Directors of Synchronoss will consist of (i) two directors nominated and elected by the holders of shares of Series A Preferred Stock; (ii) four directors who meet the independence criteria set forth in the applicable listing standards (each of whom will be initially agreed upon by Synchronoss and Silver); and (iii) four other directors, two of whom shall satisfy the independence criteria of the applicable listing standards and, as of the closing of the Preferred Transaction, one of whom shall be the individual then serving as chief executive officer of Synchronoss and one of whom shall be the current chairman of the Board of Directors of Synchronoss as of the date of execution of the Investors Rights Agreement. Following the closing of the Preferred Transaction, so long as the holders of Series A Preferred Stock have the right to nominate at least one director to the Board of Directors of Synchronoss pursuant to the Series A Certificate, Silver will have the right to designate two members of the Nominating and Corporate Governance Committee of the Board of Directors.

Pursuant to the terms of the Investor Rights Agreement, neither Silver nor its affiliates may transfer any shares of Series A Preferred Stock subject to certain exceptions (including transfers to affiliates that agree to be bound by the terms of the Investor Rights Agreement).

For so long as Silver has the right to appoint a director to the Board of Directors of Synchronoss, without the prior approval by a majority of directors voting who are not appointed by the holders of shares of Series A Preferred Stock, neither Silver nor its affiliates will directly or indirectly purchase or acquire any debt or equity securities of Synchronoss (including equity-linked derivative securities) if such purchase or acquisition would result in Silver's Standstill Percentage (as defined in the Investor Rights Agreement) being in excess of 30%. However, the foregoing standstill restrictions would not prohibit the purchase of shares pursuant to the PIPE Purchase Agreement or the receipt of shares of Series A Preferred Stock issued as Preferred Dividends pursuant to the Series A Certificate, shares of Common Stock received upon conversion of shares of Series A Preferred Stock or receipt of any shares of Series A Preferred Stock, Common Stock or other securities of the Company otherwise paid as dividends or as an increase of the Liquidation Preference (as defined in the Series A Certificate) or distributions thereon. Silver will also have preemptive rights with respect to issuances of securities of Synchronoss to maintain its ownership percentage.

Under the terms of the Investor Rights Agreement, Silver will be entitled to (i) three demand registrations, with no more than two demand registrations in any single calendar year and provided that each demand registration must include at least 10% of the shares of Common Stock held by Silver, including shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock and (ii) unlimited piggyback registration rights with respect to primary issuances and all other issuances.

A summary of the Company's Series A Convertible Participating Perpetual Preferred Stock balance at December 31, 2019 and changes during the year ended December 31, 2019, are presented below:

	Preferred Stock	
	Shares	Amount
Balance at December 31, 2018	195	\$ 176,603
Issuance of preferred stock	22	—
Initial discount and issuance costs related to preferred stock	—	—
Amortization of preferred stock issuance costs	—	2,257
Issuance of preferred PIK dividend	—	22,005
Balance at December 31, 2019	217	\$ 200,865

### **Registration Rights**

There were no significant changes to the Company's registration rights during the year ended December 31, 2019.

### **13. Stock Plans**

In March 2015, the Company adopted the 2015 Equity Incentive Plan (the "2015 Plan"). The 2015 Plan replaces the Company's prior 2000 Equity Incentive Plan (the "2000 Plan") and the 2006 Equity Incentive Plan (the "2006 Plan") (collectively, the "Plans"). Beginning March 2015, all awards were granted under the 2015 Plan. In addition, any awards that were previously granted under any prior Plans that terminate without issuance of shares, shall be eligible for issuance under the 2015 Plan.

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Under the 2015 Plan, the Company may grant to its employees, outside directors and consultants awards in the form of non-qualified stock options, shares of restricted stock, stock units, or stock appreciation rights and performance shares. The Company’s Board of Directors administers the Plan and is responsible for determining the individuals to be granted options or shares, the number of options or shares each individual will receive, the price per share and the exercise period of each option.

During 2017, the Company’s Board of Directors approved the issuance of market-based restricted stock to certain executives which are eligible to vest if the volume-weighted average closing price over 20 consecutive trading days equals or exceeds certain stock prices during the specific performance period from July 2017 to July 2019. The Company utilized the Monte Carlo simulation to estimate the fair value of the restricted stock on its grant date.

In connection with the appointment a new Chief Executive Officer in November 2017, the Company entered into an employment agreement which provided for the grant of restricted stock awards, stock options and performance stock awards. These awards were approved by the Compensation Committee of Synchronoss’ Board of Directors and granted as an inducement equity award outside the 2015 Plan in accordance with the Nasdaq Listing Rule 5635(c)(4) (the “Inducement Rule”).

On December 15, 2017, the Compensation Committee adopted the 2017 New Hire Equity Incentive Plan (“2017 New Hire Plan”), which is intended to be exempt from the stockholder approval requirements under the “inducement grant exception” provided by the Inducement Rule. The Committee authorized the issuance of up to 1.5 million Common Shares to new hires, with the purpose of promoting the long-term success of the Company and the creation of stockholder value by (a) providing for the attraction and retention of new employees with exceptional qualifications, (b) encouraging new employees to focus on critical long-range objectives, and (c) linking new employees directly to stockholder interests through increased stock ownership. As required by the Inducement Rule, the Company issues a press release promptly upon issuing shares to new employees pursuant to the 2017 New Hire Plan.

There were no significant changes to the Company’s Stock Plans during the year ended December 31, 2019. As of December 31, 2019, there were 1.8 million shares available for the grant or award under the Company’s 2015 Plan and 0.3 million shares available for the grant or award under the Company’s 2017 New Hire equity incentive Plan.

The Company’s performance cash awards granted to executives under the Long Term Incentive (“LTI”) Plans have been accounted for as liability awards, due to the Company’s intent and the ability to settle such awards in cash upon vesting and has reflected such awards in accrued expenses. As of December 31, 2019, the liability for such awards is approximately \$0.6 million.

***Stock-Based Compensation***

The following table summarizes stock-based compensation expense related to all of the Company’s stock awards included by operating expense categories, as follows:

	Twelve Months Ended December 31,		
	2019	2018	2017
Cost of revenues	\$ 2,929	\$ 4,370	\$ 4,602
Research and development	4,227	6,055	6,030
Selling, general and administrative	15,094	17,179	11,863
Total stock-based compensation expense	\$ 22,250	\$ 27,604	\$ 22,495



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The following table summarizes stock-based compensation expense related to all of the Company's stock awards included by award types, as follows:

	<b>Twelve Months Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Stock options	\$ 7,348	\$ 7,368	\$ 6,311
Restricted stock awards	14,775	20,216	15,802
Employee Stock Purchase Plan	—	—	382
Performance Based Cash Units	127	20	—
<b>Total stock-based compensation before taxes</b>	<b>22,250</b>	<b>27,604</b>	<b>22,495</b>
Tax benefit	\$ 3,455	\$ 5,387	\$ 3,921

The total stock-based compensation cost related to unvested equity awards as of December 31, 2019 was approximately \$30.8 million. The expense is expected to be recognized over a weighted-average period of approximately 1.9 years.

The total stock-based compensation cost related to unvested performance-based cash units as of December 31, 2019 was approximately \$0.3 million. The expense is expected to be recognized over a weighted-average period of approximately 1.6 years.

In June 2019, two of Synchronoss board members decided not to stand re-election at the 2019 Annual Shareholder Meeting. The Company accelerated the vesting of certain unvested restricted stock awards and stock options for these board members at their termination date. The Company accounted for the acceleration of these grants as a Type I modification under ASC Topic 718 and recorded a one-time expense of \$0.3 million.

As part of the work force reduction driven by corporate restructuring initiated in 2016, the Company terminated certain employees in 2017 and accelerated the vesting of certain unvested restricted stock awards and stock options for these employees. The Company accounted for the acceleration of these awards as a result of the restructuring termination as a Type III modification under ASC Topic 718 and recorded a one-time expense of \$1.1 million.

In July 2017, the Company modified the terms of performance-based restricted stock awards granted to certain employees in 2015 and 2016 to modify the performance period as the performance targets for 2017 established previously were not considered probable due to the changes in the business driven by significant acquisitions and divestitures by the Company. The modification of the performance-based shares was considered a Type III modification under ASC Topic 718, and as a result, the Company reversed all previously recorded expense for these awards and recorded the new compensation expense over the new requisite service period as a result of the modification. The total incremental compensation expense resulting from these modifications was \$2.0 million.

#### ***Replacement Awards***

On January 19, 2017, certain equity awards granted under the Intralinks Holdings, Inc. 2010 Equity Incentive Plan and the Intralinks Holdings, Inc. 2007 Stock Option and Grant Plan (together, the "Intralinks Plans") were assumed by the Company's 2015 Equity Incentive Plan (the "2015 Plan"). The assumed awards are subject to the vesting and service conditions of the 2015 Plan. Subsequently, these were accelerated as part of the Intralinks Transaction.

Among the equity awards assumed were restricted stock units subject to market-based performance targets in order for them to vest. Vesting is subject to continued service requirements through the vesting date. The grant date fair value for such unvested restricted stock units was estimated using a Monte Carlo simulation that incorporates option-pricing inputs covering the period from the grant date through the end of the performance period. Stock-based compensation expense for such unvested restricted stock units is recognized on a straight-line basis over the vesting period, regardless of whether the market condition is satisfied. All of these awards were canceled during 2017 pursuant to termination of related employees.

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**Stock Options**

Options that were granted under the Company's 2000, 2006 and 2015 Plans generally vest 25% on the first-year anniversary of the date of grant plus an additional 1/48th for each month of continuous service thereafter.

Options that were granted under the Company's 2010 Plan generally vest 50% on the second-year anniversary and an additional 1/48th for each month of continuous service thereafter.

Incentive options that were granted under the 2000 and 2006 Plans generally vest 25% on the first-year anniversary on the date of grant and an additional 1/48th for each month of continuous service thereafter.

There were no significant changes to the Company's Stock Option Plans during the year ended December 31, 2019.

The Company uses the Black-Scholes option pricing model for determining the estimated fair value for stock options. The weighted-average assumptions used in the Black-Scholes option pricing model are as follows:

	Twelve Months Ended December 31,		
	2019	2018	2017
Expected stock price volatility	69.6%	65.5%	57.0%
Risk-free interest rate	1.9%	2.6%	1.8%
Expected life of options (in years)	4.34	4.13	4.08
Expected dividend yield	0.0%	0.0%	0.0%
Weighted-average fair value (grant date) of the options	\$ 3.82	\$ 4.91	\$ 6.30

The following table summarizes information about stock options outstanding as of December 31, 2019:

Options	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2018	4,254	\$ 17.93		
Options Granted	1,249	7.05		
Options Exercised	(7)	5.48		
Options Cancelled	(574)	23.51		
Outstanding at December 31, 2019	4,922	\$ 14.54	4.78	\$ 5.56
Vested at December 31, 2019	1,792	\$ 23.54	3.59	\$ 1.23
Exercisable at December 31, 2019	1,792	\$ 23.54	3.59	\$ 1.23

The total intrinsic value of stock options exercised during the year ended December 31, 2019 and 2018 was \$20.5 thousand and nil, respectively. The total intrinsic value of stock options exercisable as of December 31, 2019 and 2018 was \$1.2 thousand and nil, respectively.

**Awards of Restricted Stock and Performance Stock**

Restricted stock awards ("Restricted Stock") granted under the Company's Plans generally vest 25% of the applicable shares on the first anniversary of the date of grant and thereafter an additional 1/16th for each three months of continuous service.

Performance stock awards granted under the Company's 2006 Plan generally vest with respect to one-third of the applicable shares on the date that the performance objectives under the performance stock awards are achieved and thereafter an additional one-third for each year of continuous service.

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Generally, performance stock awards granted under the Company's 2015 Plan vest at the end of a three-year period based on service and achievement of certain performance objectives determined by the Company's Board of Directors.

There were no significant changes to the Company's restricted stock award ("Restricted Stock") and performance stock plan during the year ended December 31, 2019.

A summary of the Company's unvested restricted stock at December 31, 2019, and changes during the year ended December 31, 2019, is presented below:

<b>Unvested Restricted Stock</b>	<b>Number of Awards</b>	<b>Weighted- Average Grant Date Fair Value</b>
Unvested at December 31, 2018	2,630	\$ 12.71
Granted	2,204	7.02
Vested	(1,188)	17.70
Forfeited	(271)	10.90
Unvested at December 31, 2019	3,375	\$ 8.68

Restricted stock awards are granted subject to other service conditions or service and performance conditions ("Performance-Based Awards"). Restricted stock and Performance-Based Awards are measured at the closing stock price at the date of grant and are recognized straight line over the requisite service period.

#### ***Performance Based Cash Units***

Performance based cash units granted under the Company's 2015 Plan vest at the end of a three-year period based on service and achievement of certain performance objectives determined by the Company's Board of Directors.

A summary of the Company's unvested performance-based cash units at December 31, 2019 and changes during the year ended December 31, 2019, is presented below:

<b>Unvested Cash Units</b>	<b>Number of Awards</b>	<b>Weighted- Average Grant Date Fair Value</b>
Unvested at December 31, 2018	70	\$ 6.14
Granted	976	—
Vested	—	—
Forfeited	—	—
Unvested at December 31, 2019	1,046	\$ 4.75

Performance based cash units are measured at the closing stock price at the reporting period end date and are recognized straight line over the requisite service period. The expense for the period will increase or decrease based on updated fair values of these awards at each reporting date.

#### **14. 401(k) Plan**

The Company has a 401(k) plan (the "401(k) Plan") covering all eligible employees. The 401(k) Plan allows for a discretionary employer match. The Company incurred and expensed \$2.6 million, \$2.2 million, and \$2.9 million for the years ended December 31, 2019, 2018 and 2017, respectively, in 401(k) Plan match contributions.

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**15. Restructuring**

The Company continues to identify workforce optimization opportunities to better align the Company's resources with its key strategic priorities.

A summary of the Company's restructuring accrual at December 31, 2019 and changes during the year ended December 31, 2019, are presented below:

	Balance at December 31, 2018	Charges	Payments	Other Adjustments <sup>1</sup>	Balance at December 31, 2019
Employment termination costs	\$ 1,276	\$ 755	\$ (2,082)	\$ 141	\$ 90

<sup>(1)</sup> Includes non-cash adjustments and reclassifications.

**16. Income Taxes**

The components of income or (loss) from continuing operations before income taxes are as follows:

	Year Ended December 31,		
	2019	2018	2017
Domestic	\$ (104,445)	\$ (216,589)	\$ (210,214)
Foreign	3,152	(46,585)	(18,873)
<b>Total</b>	<b>\$ (101,293)</b>	<b>\$ (263,174)</b>	<b>\$ (229,087)</b>

The components of income tax (expense) benefit from continuing operations are as follows:

	Year Ended December 31,		
	2019	2018	2017
Current:			
Federal	\$ (208)	\$ 3,163	\$ 600
State	46	116	—
Foreign	(2,048)	(2,612)	(4,817)
Deferred:			
Federal	(28)	6,729	40,634
State	(17)	2,214	1,340
Foreign	81	8,284	(2,894)
<b>Income tax (provision) benefit</b>	<b>\$ (2,174)</b>	<b>\$ 17,894</b>	<b>\$ 34,863</b>

Reconciliations of the statutory tax rates and the effective tax rates from continuing operations for the years ended December 31, 2019, 2018 and 2017 are as follows:

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	Year Ended December 31,		
	2019	2018	2017
Statutory rate	21.0 %	21.0 %	35.0 %
State taxes, net of federal benefit	(0.8)%	3.0 %	1.0 %
Effect of rates different than statutory	(4.3)%	(2.0)%	(2.0)%
Minority interest	0.2 %	(1.0)%	(1.0)%
Non-deductible stock-based compensation	(2.5)%	(2.0)%	(2.0)%
Other permanent adjustments	(0.3)%	— %	(2.0)%
Research and development credit	0.5 %	— %	— %
Change in valuation allowance	6.7 %	(17.0)%	(7.0)%
Statute release of uncertain tax position	0.6 %	1.0 %	— %
Other	(1.4)%	1.0 %	(2.0)%
Acquisitions and foreign tax residency changes	— %	3.0 %	(2.0)%
Investment in JV	(1.7)%	— %	— %
Global Intangible Low-Taxed Income	(3.3)%	— %	— %
Waived deductions for purposes of Base Erosion Anti-Abuse Tax	(17.0)%	— %	— %
Tax Reform Rate Reduction	— %	— %	(3.0)%
<b>Net</b>	<b>(2.1)%</b>	<b>7.0 %</b>	<b>15.0 %</b>

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Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	<b>As of December 31,</b>	
	<b>2019</b>	<b>2018</b>
<b>Deferred tax assets:</b>		
Accrued liabilities	\$ 78	\$ 88
Deferred revenue	12,943	13,120
Bad debts reserve	9,291	1,108
Deferred compensation	5,262	4,680
Federal net operating loss carry forwards	7,969	28,193
State net operating loss carry forwards	4,236	7,085
Foreign net operating loss carry forwards	9,401	10,880
Deferred rent	—	776
Lease Obligations	13,791	—
Capital loss carry forward	1,563	1,689
Intangible assets	2,716	1,318
Basis difference	8,041	7,632
Installment sale	8,726	8,819
Other	3,208	3,508
<b>Total deferred tax assets</b>	<b>\$ 87,225</b>	<b>\$ 88,896</b>
<b>Deferred tax liabilities:</b>		
Depreciation and amortization	(5,965)	(9,179)
Lease Assets	(9,593)	—
<b>Total deferred tax liabilities</b>	<b>(15,558)</b>	<b>(9,179)</b>
Less: valuation allowance	(73,346)	(81,064)
<b>Net deferred income tax (liabilities) assets</b>	<b>\$ (1,679)</b>	<b>\$ (1,347)</b>

As of December 31, 2019, the Company has federal and state income tax net operating loss ("NOL") carryforwards of \$38.0 million and \$67.3 million, respectively, including NOL carryforwards which will expire at various dates from 2023 through 2039, and NOL carryforwards which do not expire. The Company also has foreign NOL carryforwards in various jurisdictions of \$98.5 million that have various carryforward periods. Such NOL carryforwards expire as follows:

2023 - 2027	846
2028 - 2038	74,911
Indefinite	128,071
	<b>\$ 203,828</b>

In evaluating the Company's ability to recover its deferred tax assets within the jurisdiction from which they arise, the Company considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. In projecting future taxable income, the Company begins with historical results and incorporates assumptions including the amount of future state, federal and foreign pretax operating income, the reversal of temporary differences, and the implementation of feasible and prudent tax-planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates the Company is using to manage the underlying businesses.

The foreign NOL carryforwards in the income tax returns filed included unrecognized tax benefits taken in prior years. The NOLs for which a deferred tax asset is recognized for financial statement purposes in accordance with ASC 740 are presented net of these unrecognized tax benefits.

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The Company continues to evaluate the ability to realize all of its net deferred tax assets at each reporting date and records a benefit for deferred tax assets to the extent it has deferred tax liabilities that provide a source of income to benefit the deferred tax asset. As a result of this analysis, the Company recorded a valuation allowance against the net deferred tax assets of certain foreign jurisdictions as the realization of these assets is not more likely than not, given uncertainty of future earnings in these jurisdictions. The valuation allowance decreased by \$7.7 million and increased by \$48.5 million during the years ended December 31, 2019 and December 31, 2018, respectively. The decrease in tax year ended December 31, 2019 is primarily related to utilization of NOL carryforwards. The increase in tax year ended December 31, 2018 was primarily attributable to an increase in NOL carryforwards and valuation allowance recorded in additional foreign jurisdictions where realizability of the deferred tax assets is no longer more likely than not.

The Company is subject to taxation in the United States and various states and foreign jurisdictions. As of December 31, 2019, the Company's tax years for 2016 through 2019 are subject to examination by the tax authorities. With few exceptions, as of December 31, 2019, the Company is no longer subject to U.S. federal, state, local, or foreign examinations by tax authorities for years before 2015. However, to the extent we utilize our NOL carryforwards in the future, the tax years in which the attribute was generated may still be adjusted upon examination by the tax authorities in the future period when the attribute is utilized.

The Company is currently under income tax examinations in Illinois for the tax years 2014 through 2015, Colorado for tax years 2014 through 2017, and Massachusetts for the tax years 2015 through 2017. The Company does not believe that the results of this audit will have a material effect on its financial position or results of operations.

In 2017, the TCJA included a transition tax based on undistributed, untaxed foreign earnings analyzed in aggregate. The final analysis performed by the Company resulted in an overall untaxed deficit and no transition tax. In addition, no income taxes have been provided for any remaining undistributed foreign earnings not subject to the transition tax, or any additional outside basis difference inherent in these entities, as these amounts continue to be indefinitely reinvested in foreign operations. Should the Company decide to repatriate the foreign earnings, it would need to adjust its income tax provision in the period it determined that the earnings will no longer be indefinitely invested outside the United States. Due to the timing and circumstances of repatriation of such earnings, if any, it is not practicable to determine the unrecognized deferred tax liability relating to such amounts.

A reconciliation of the amounts of unrecognized tax benefits excluding interest, are as follows:

<b>Unrecognized tax benefit at December 31, 2016</b>	<b>4,585</b>
Increase for tax positions taken during prior year	1,823
Increases related to acquired entities	13,278
Reduction due to lapse of applicable statute of limitations	(1,512)
Decreases related to divested entities	(13,645)
<b>Increases for tax positions of current period</b>	<b>1,946</b>
Unrecognized tax benefit at December 31, 2017	6,475
Decrease for tax positions taken during prior year	(567)
Increases related to acquired entities	—
Reduction due to lapse of applicable statute of limitations	(2,657)
Decreases related to divested entities	—
Increases for tax positions of current period	721
<b>Unrecognized tax benefit at December 31, 2018</b>	<b>3,972</b>
Increase for tax positions taken during prior year	—
Increases related to acquired entities	—
Increases and (decreases) related to Lapse of Statute of Limitations	(703)
Decreases related to divested entities	—
Increases for tax positions of current period	—
<b>Unrecognized tax benefit at December 31, 2019</b>	<b>\$ 3,269</b>

Included in the balance of unrecognized tax benefits as of the years ended December 31, 2019 and 2018, are \$2.8 million and \$3.5 million, respectively, of tax benefits that, if recognized, would affect the effective tax rate.

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The Company recognizes interest and penalties, if any, related to unrecognized tax benefits in interest expense. The liability for unrecognized tax benefits excludes accrued interest of \$0.3 million, \$0.4 million, and \$0.6 million, for the years ended December 31, 2019, 2018 and 2017, respectively. The Company believes that it is reasonably possible that approximately \$0.5 million of its currently unrecognized tax benefits primarily related to research and development credits, which are individually insignificant, may be recognized by the end of 2020 as a result of a lapse of the statute of limitations.



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**17. Earnings per Common Share (“EPS”)**

Basic EPS is computed based upon the weighted average number of common shares outstanding for the year. Diluted EPS is computed based upon the weighted average number of common shares outstanding for the year plus the dilutive effect of common stock equivalents using the treasury stock method and the average market price of the Company’s common stock for the year. The Company includes participating securities (Redeemable Convertible Preferred Stock - Participation with Dividends on Common Stock that contain preferred dividend) in the computation of EPS pursuant to the two-class method. The two-class method of computing earnings per share is an allocation method that calculates earnings per share for common stock and participating securities. During periods of net loss, no effect is given to the participating securities because they do not share in the losses of the Company.

The following table provides a reconciliation of the numerator and denominator used in computing basic and diluted net income attributable to common stockholders per common share from continued and discontinued operations.

	Twelve Months Ended December 31,		
	2019	2018	2017
<b>Numerator - Basic:</b>			
Net loss from continuing operations	\$ (103,467)	\$ (245,280)	\$ (194,224)
Net (income) loss attributable to redeemable noncontrolling interests	(1,126)	8,837	9,291
Preferred stock dividend	(32,134)	(25,593)	—
Net (loss) income from continuing operations attributable to Synchronoss	(136,727)	(262,036)	(184,933)
Income from discontinued operations, net of taxes**	—	18,288	75,495
Net (loss) income attributable to Synchronoss	\$ (136,727)	\$ (243,748)	\$ (109,438)
<b>Numerator - Diluted:</b>			
Net (loss) income from continuing operations attributable to Synchronoss	\$ (136,727)	\$ (262,036)	\$ (184,933)
Income effect for interest on convertible debt, net of tax	—	—	—
Net loss from continuing operations adjusted for the convertible debt	(136,727)	(262,036)	(184,933)
Income from discontinued operations, net of taxes**	—	18,288	75,495
Net loss attributable to Synchronoss	\$ (136,727)	\$ (243,748)	\$ (109,438)
<b>Denominator:</b>			
Weighted average common shares outstanding — basic	40,694	40,277	44,669
Dilutive effect of:			
Shares from assumed conversion of convertible debt <sup>1</sup>	—	—	—
Shares from assumed conversion of preferred stock <sup>2</sup>	—	—	—
Options and unvested restricted shares	—	—	—
Weighted average common shares outstanding — diluted	40,694	40,277	44,669
<b>Basic EPS</b>			
Continuing operations	\$ (3.36)	\$ (6.51)	\$ (4.14)
Discontinued operations**	\$ —	\$ 0.46	\$ 1.69
	\$ (3.36)	\$ (6.05)	\$ (2.45)
<b>Diluted EPS</b>			
Continuing operations	\$ (3.36)	\$ (6.51)	\$ (4.14)
Discontinued operations**	\$ —	\$ 0.46	\$ 1.69
	\$ (3.36)	\$ (6.05)	\$ (2.45)
Anti-dilutive stock options excluded	—	—	—
Unvested shares of restricted stock awards	3,375	2,700	2,648

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- (1) The calculation does not include the effect of assumed conversion of convertible debt of 1,288,292, 3,972,939, and 4,325,646 shares for the year ended December 31, 2019, 2018 and 2017, respectively; which is based on 18.8072 shares per \$1,000 principal amount of the Senior Convertible Notes.
- (2) The calculation does not include the effect of assumed conversion of preferred stock of 11,383,105 and 9,312,528 shares for the year ended December 31, 2019 and 2018, respectively; which is based on 55.5556 shares per \$1,000 principal amount of the preferred stock, because the effect would have been anti-dilutive.

**18. Commitments.**

***Non-cancelable agreements***

The Company leases office space, automobiles, office equipment and co-location services under non-cancelable agreements that expire at various dates, with the latest expiration in 2023.

Aggregate annual future minimum payments under non-cancelable agreements are as follows:

As of December 31, 2019	Non-cancelable agreements	
2020	\$	25,275
2021		2,575
2022		2,207
2023 and thereafter		920
	\$	<u>30,977</u>

**19. Legal Matters**

In the ordinary course of business, the Company is regularly subject to various claims, suits, regulatory inquiries and investigations. The Company records a liability for specific legal matters when it determines that the likelihood of an unfavorable outcome is probable, and the loss can be reasonably estimated. Management has also identified certain other legal matters where they believe an unfavorable outcome is not probable and, therefore, no reserve is established. Although management currently believes that resolving claims against the Company, including claims where an unfavorable outcome is reasonably possible, will not have a material impact on the Company's business, financial position, results of operations, or cash flows, these matters are subject to inherent uncertainties and management's view of these matters may change in the future. The Company also evaluates other contingent matters, including income and non-income tax contingencies, to assess the likelihood of an unfavorable outcome and estimated extent of potential loss. It is possible that an unfavorable outcome of one or more of these lawsuits or other contingencies could have a material impact on the liquidity, results of operations, or financial condition of the Company.

On May 1, 2017, May 2, 2017, June 8, 2017 and June 14, 2017, four putative class actions were filed against the Company and certain of its current and former officers and directors in the United States District Court for the District of New Jersey (the "Securities Law Action"). After these cases were consolidated, the court appointed as lead plaintiff Employees' Retirement System of the State of Hawaii, which filed, on November 20, 2017, a consolidated complaint purportedly on behalf of purchasers of the Company's common stock between February 3, 2016 and June 13, 2017. On February 2, 2018, the defendants moved to dismiss the consolidated complaint in its entirety, with prejudice. Before that motion was decided, on August 24, 2018, lead plaintiff filed a consolidated amended complaint purportedly on behalf of purchasers of the Company's common stock between October 28, 2014 and June 13, 2017. On June 28, 2019, the Court granted defendants' motion to dismiss the consolidated amended complaint in its entirety, without prejudice, allowing lead plaintiff to leave to amend its complaint. On August 14, 2019, lead plaintiff filed a second amended complaint. The second amended complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and it alleges, among other things, that the defendants made false and misleading statements of material information concerning the Company's financial results, business operations, and prospects. On October 4, 2019, the defendants moved to dismiss the second amended complaint in its entirety, with prejudice. The Company believes that the asserted claims lack merit and intends to defend against all of the claims vigorously. The plaintiff seeks unspecified damages, fees, interest,

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and costs. Due to the inherent uncertainties of litigation, the Company cannot predict the outcome of the actions at this time and can give no assurance that the asserted claims will not have a material adverse effect on its financial position or results of operations.

On September 15, 2017, October 24, 2017, October 27, 2017 and October 30, 2017, the Company's shareholders filed derivative lawsuits against certain of its officers and directors and the Company (as nominal defendant) in the United States District Court for the District of New Jersey (the "Derivative Suits"). On May 24, 2018, the Court consolidated the Derivative Suits and appointed Lisa LeBoeuf as lead plaintiff. The lead plaintiff designated as the Operative Complaint the complaint she previously had filed on October 27, 2017, which alleges claims related to breaches of fiduciary duties and unjust enrichment. The Operative Complaint's allegations relate to substantially the same facts as those underlying the Securities Law Action described above. Plaintiff seeks unspecified damages and for the Company to take steps to improve its corporate governance and internal procedures. Defendants' motion to dismiss the Operative Complaint is pending before the Court.

On March 7, 2019, Synchronoss shareholders, Beth Daniel and Juan Solis, filed a separate derivative lawsuit against certain of the Company's current and former officers and directors and the Company (as nominal defendant) in the Court of Chancery of the State of Delaware, asserting substantially the same allegations as those underlying the Derivative Suits and the Securities Law Action described above. Plaintiffs seek unspecified damages and for the Company to take steps to improve its corporate governance and internal procedures. On May 20, 2019, the parties stipulated to a stay of the action pending a ruling on the pending motion to dismiss in the Derivative Suits. The Company believes that the asserted claims lack merit and intends to defend against all of the claims vigorously. Due to the inherent uncertainties of litigation, the Company cannot predict the outcome of the Derivative Suits at this time and can give no assurance that the asserted claims will not have a material adverse effect on our financial position or results of operations.

Except as set forth above, the Company is not currently subject to any legal proceedings that could have a material adverse effect on its operations; however, it may from time to time become a party to various legal proceedings arising in the ordinary course of its business. The Company is currently the plaintiff in several patent infringement cases. The defendants in several of these cases have filed counterclaims. Although the Company cannot predict the outcome of the cases at this time due to the inherent uncertainties of litigation, the Company continues to pursue its claims and believes that the counterclaims are without merit, and the Company intends to defend against all of such counterclaims.

## **20. Subsequent Events**

Subsequent to December 31, 2019, the Company paid in-kind the accrued Preferred Dividends of \$7.9 million.

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**21. Additional Financial Information****Other Income (expense), net**

The following table sets forth the components of Other Income (expense), net included in the Consolidated Statements of Operations:

	Twelve Months Ended December 31,		
	2019	2018	2017
FX gains (losses) <sup>(1)</sup>	\$ 31	\$ (478)	\$ (4,952)
PIK Note impairment <sup>(2)</sup>	—	(84,314)	(14,562)
Litigation settlement <sup>(3)</sup>	—	4,495	—
Remeasurement gain (loss) on financial instrument <sup>(4)</sup>	—	3,849	(4,367)
Divestiture: SpeechCycle <sup>(5)</sup>	—	—	4,947
Income from Investment <sup>(6)</sup>	—	519	—
Income from sale of intangible assets <sup>(7)</sup>	5,518	—	—
Income from Tax credit <sup>(8)</sup>	1,039	—	—
Others <sup>(9)</sup>	801	1,012	1,256
	<u>\$ 7,389</u>	<u>\$ (74,917)</u>	<u>\$ (17,678)</u>

<sup>(1)</sup> Fair value of foreign exchange gains and losses

<sup>(2)</sup> PIK Note impairment on the troubled debt restructuring

<sup>(3)</sup> Represents Legal settlement of \$4.2 million and \$0.3 million IP settlement from third parties

<sup>(4)</sup> Remeasurement of gain/loss on Mandatorily Redeemable Put option for common shares held by Siris.

<sup>(5)</sup> Represents gain on divestiture of SpeechCycle.

<sup>(6)</sup> Represents gain on sale on the Company's cost investment in Clarity, Money Inc.

<sup>(7)</sup> Represents gain on sale on the Company's IP addresses

<sup>(8)</sup> Represents VOX Acquisition R&D Tax Credit

<sup>(9)</sup> Represents an aggregate of individually immaterial transactions

**22. Summary of Quarterly Results of Operations (Unaudited)**

Quarterly results of operations for 2019 and 2018 are as follows:

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2019	Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
Net revenues	\$ 88,105	\$ 77,846	\$ 52,210	\$ 90,588
Loss from continuing operations	(20,339)	(18,288)	(50,972)	(18,189)
Net (loss) income	(19,737)	(16,577)	(61,213)	(5,940)
Net (loss) income attributable to Synchronoss	(27,587)	(25,030)	(69,432)	(14,678)
<b>Basic:</b>				
Continuing operations <sup>(1)</sup>	\$ (0.68)	\$ (0.61)	\$ (1.70)	\$ (0.36)
Discontinued operations <sup>(1)</sup>	—	—	—	—
	<u>\$ (0.68)</u>	<u>\$ (0.61)</u>	<u>\$ (1.70)</u>	<u>\$ (0.36)</u>
<b>Diluted:</b>				
Continuing operations <sup>(1)</sup>	\$ (0.68)	\$ (0.61)	\$ (1.70)	\$ (0.36)
Discontinued operations <sup>(1)</sup>	—	—	—	—
	<u>\$ (0.68)</u>	<u>\$ (0.61)</u>	<u>\$ (1.70)</u>	<u>\$ (0.36)</u>

2018	Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
Net revenues	\$ 83,709	\$ 76,742	\$ 83,286	\$ 82,102
Loss from continuing operations	(44,234)	(43,100)	(34,629)	(42,313)
Net (loss) income	(37,977)	(41,264)	(46,644)	(101,107)
Net (loss) income attributable to Synchronoss	(40,045)	(47,265)	(54,529)	(101,909)
<b>Basic:</b>				
Continuing operations <sup>(1)</sup>	\$ (0.95)	\$ (1.20)	\$ (1.38)	\$ (3.01)
Discontinued operations <sup>(1)</sup>	—	—	—	0.45
	<u>\$ (0.95)</u>	<u>\$ (1.20)</u>	<u>\$ (1.38)</u>	<u>\$ (2.56)</u>
<b>Diluted:</b>				
Continuing operations <sup>(1)</sup>	\$ (0.95)	\$ (1.20)	\$ (1.38)	\$ (3.01)
Discontinued operations <sup>(1)</sup>	—	—	—	0.45
	<u>\$ (0.95)</u>	<u>\$ (1.20)</u>	<u>\$ (1.38)</u>	<u>\$ (2.56)</u>

<sup>(1)</sup> Per common share amounts for the quarters and full year have been calculated separately. Accordingly, quarterly amounts do not add to the annual amount because of differences in the number of weighted-average common shares outstanding during each period which results principally from the effect of issuing shares of the Company's common stock and options throughout the year.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Not applicable.

## **ITEM 9A. CONTROLS AND PROCEDURES**

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

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and to ensure that information required to be disclosed is accumulated and communicated to management, including our principal executive and financial officers, to allow timely decisions regarding disclosure. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. The Chief Executive Officer (“CEO”) and the Chief Financial Officer (“CFO”), with assistance from other members of management, have reviewed the effectiveness of our disclosure controls and procedures as of December 31, 2019 and, based on their evaluation, have concluded that the disclosure controls and procedures were effective as of December 31, 2019.

### ***Management’s Report on Internal Control over Financial Reporting***

The Company’s management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Exchange Act. 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.

The 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 the Company’s management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets of the Company 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.

Under the supervision, and with the participation, of our management, including the CEO and CFO, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2019. In making this assessment, management used the criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on this assessment, management, including our CEO and CFO, has concluded that our internal control over financial reporting was effective as of December 31, 2019.

The effectiveness of the Company’s internal control over financial reporting as of December 31, 2019 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which appears herein.

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

The Company concluded that the pervasive material weakness identified under item 9a of our Annual Report on Form 10-K for the year ended December 31, 2018, pertaining to the Company’s control environment, risk assessment, control activity, information and communication and monitoring components of the COSO criteria, has been remediated (the “Remediated Material Weakness”).

During the year ended December 31, 2019, the Company completed the implementation of the following remedial measures designed to address the Remediated Material Weakness.

#### **Control Environment**

- Hired a Director of Revenue Recognition, a Director of Technical Accounting, and other resources to augment our staff to support further enhancement on the controls and procedures surrounding revenue recognition, technical matters and financial reporting.

- Increased standardization of contract documentation and revenue analysis for individual transactions, including increased oversight of revenue opportunities and contract review by personnel with the requisite accounting knowledge to identify revenue-impacting terms and consider potential downstream effects.
- Developed a more comprehensive review process and monitoring controls over contracts with customers to ensure accurate accounting for multiple-element arrangements.
- Implemented and effectively executed a quarterly non-recurring transaction review meeting with key stakeholders within the Company to identify and discuss potentially significant transactions. Meetings are attended by process owners across various functions or departments, both domestic and international, to promote regular and effective communication between finance and non-finance personnel, and to ensure that information related to significant transactions is communicated timely.
- Performed a review of key business process controls related to high-risk financial statement accounts, such as revenue, significant transactions, capitalized software, fixed assets, accounts receivable, treasury and financial close, which resulted in the redesign of existing controls and the addition of newly developed / documented control activities, in order to mitigate known risks and strengthen the overall control environment. The redesigned control environment was tested by the Company's internal auditors and management.
- Management reinforces compliance through consistent communication.

#### Control Activities

- Performed a detailed review of key IT process controls and enhanced the control design. The IT control environment was tested by the Company's internal auditors and management for design and operating effectiveness.
- Engaged external resources to assist management in our control design assessment and execution.

#### Information and Communication

- Established a Disclosure Committee that includes key members of management that have responsibility for disclosure information necessary for periodic filings with the SEC. The committee met formally for purposes of the Fiscal 2019 filings to discuss all significant events and relevant disclosure matters for the filing.

#### Monitoring Activities and Risk Assessment

- Formally established an Internal Audit function and our Audit Committee approved their charter in January 2019.
- Hired external resources to support and improve our Internal Audit Function. The internal audit function performed detailed internal control testing for all key controls and processes.
- Enhanced and completed our risk assessment processes to identify relevant accounts and assertions and design control procedures that relate to relevant risks.
- Reevaluated and completed our entity level control design and testing. The Company's internal auditor and management tested the entity level controls design and operating effectiveness.

Except for the foregoing, there was no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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

The Company's management, including the Company's CEO and CFO, recognizes that the Company's disclosure controls and procedures and the Company's internal control over financial reporting cannot prevent or detect all errors and all fraud. A control system, regardless of how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system will be met. These inherent limitations include the following:

- Judgments in decision-making can be faulty, and control and process breakdowns can occur because of simple errors or mistakes.
- Controls can be circumvented by individuals, acting alone or in collusion with each other, or by management override.
- The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that 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 deterioration in the degree of compliance with policies and procedures.

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.

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Synchronoss Technologies, Inc.

### Opinion on Internal Control over Financial Reporting

We have audited Synchronoss Technologies, Inc.'s internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Synchronoss Technologies, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, 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, 2019 and 2018, the related consolidated statements of operations, comprehensive (loss) income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2019, and the related notes and schedule listed in the Index at Item 15(a)(2) and our report dated March 16, 2020, 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 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 the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit 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, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and 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/ Ernst & Young LLP  
Iselin, New Jersey  
March 16, 2020



**ITEM 9B. OTHER INFORMATION**

None.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

- a. Identification of Directors. Information concerning the directors of Synchronoss is set forth under the heading “Election of Directors” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.
- b. Audit Committee Financial Expert. Information concerning Synchronoss’ audit committee financial expert is set forth under the heading “Audit Committee” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.
- c. Identification of the Audit Committee. Information concerning the audit committee of Synchronoss is set forth under the heading “Audit Committee” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.
- d. Delinquent Section 16(a) Reports. Information concerning non-compliance, if any, with beneficial ownership reporting requirements is set forth under the caption “Delinquent Section 16(a) Reports” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.
- e. Information about our Executive Officers. Information concerning the executive officers of Synchronoss is set forth under the heading “Information about our Executive Officers” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.

Code of Ethics. Information concerning the Synchronoss Code of Business Conduct is set forth under the caption “Code of Business Conduct” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference. The Company intends to disclose on its website any amendments to, or waivers from, its Code of Business Conduct that are required to be disclosed pursuant to the rules of the SEC. Information contained on, or connected to, our website is not incorporated by reference into this annual report and should not be considered part of this report or any other filing that we make with the SEC.

**ITEM 11. EXECUTIVE COMPENSATION**

Information concerning executive compensation is set forth under the headings “Compensation of Executive Officers” and “Securities Authorized for Issuance Under Equity Compensation Plans” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Information concerning shares of Synchronoss equity securities beneficially owned by certain beneficial owners and by management is set forth under the heading “Equity Security Ownership of Certain Beneficial Owners and Management” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Information concerning certain relationships and related transactions is set forth under the heading “Certain Related Party Transactions” in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.

**ITEM 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES***

Information concerning fees and services of the Company's principal accountants is set forth under the heading "Report of the Audit Committee" and "Independent Registered Public Accounting Firm's Fees" in the Synchronoss Proxy Statement for the 2020 Annual Meeting of Stockholders and is incorporated herein by reference.

**PART IV****ITEM 15. EXHIBITS**

## (a)(1) Financial Statements:

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<a href="#">Report of Independent Registered Public Accounting Firm</a>	66
<a href="#">Consolidated Balance Sheets</a>	67
<a href="#">Consolidated Statements of Operations</a>	68
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<a href="#">Consolidated Statements of Cash Flows</a>	72
<a href="#">Notes to Financial Statements</a>	74

## (a)(2) Schedule for the years ended December 31, 2019, 2018, 2017:

## II—Valuation and Qualifying Accounts

All other Schedules have been omitted because they are not applicable, or the required information is shown in the Consolidated Financial Statements or of the Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K thereto.

## (a)(3) Exhibits:

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Restated Certificate of Incorporation of the Registrant, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
3.2	<a href="#">Amended and Restated Bylaws of the Registrant, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
3.3	<a href="#">Amendment No. 1 to Amended and Restated Bylaws of Registration, incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on February 20, 2018.</a>
3.4	<a href="#">Certificate of Designations of Series A Convertible Participating Perpetual Preferred Stock, incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on February 20, 2018.</a>
4.1	<a href="#">Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4</a>
4.2	<a href="#">Amended and Restated Investors Rights Agreement, dated December 22, 2000, by and among the Registrant, certain stockholders and the investors listed on the signature pages thereto, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
4.3	<a href="#">Amendment No. 1 to Synchronoss Technologies, Inc. Amended and Restated Investors Rights Agreement, dated April 27, 2001, by and among the Registrant, certain stockholders and the investors listed on the signature pages thereto, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
4.4	<a href="#">Registration Rights Agreement, dated November 13, 2000, by and among the Registrant and the investors listed on the signature pages thereto, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
4.5	<a href="#">Amendment No. 1 to Synchronoss Technologies, Inc. Registration Rights Agreement, dated May 21, 2001, by and among the Registrant, certain stockholders listed on the signature pages thereto and Silicon Valley Bank, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
4.6	<a href="#">Form of Common Stock Certificate, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
4.7	<a href="#">Form of Indenture for Convertible Senior Notes, incorporated by reference to Registrant's Registration Statement on Form S-3 (Commission File No. 333-197871).</a>
4.8	<a href="#">Investor Rights Agreement by and between Synchronoss Technologies, Inc. and Silver Private Holdings I, LLC dated as of February 15, 2018, incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on February 20, 2018.</a>
4.9	<a href="#">Description of Securities Registered under Section 12 of the Securities Exchange Act of 1934</a>
10.1	<a href="#">Form of Indemnification Agreement between the Registrant and each of its directors and executive officers, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
10.2	<a href="#">Synchronoss Technologies, Inc. 2000 Stock Plan and forms of agreements thereunder, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
10.3	<a href="#">Amendment No. 1 to Synchronoss Technologies, Inc. 2000 Stock Plan, incorporated by reference to Registrant's Registration Statement on Form S-1 (Commission File No. 333-132080).</a>
10.4	<a href="#">2006 Equity Incentive Plan, as amended and restated, incorporated by reference to Registrant's Schedule 14A dated April 8, 2010.</a>
10.4.1	<a href="#">2010 New Hire Equity Incentive Plan, incorporated by reference to Registrant's Registration Statement on Form S-8 (Commission File No. 333-168745).</a>

Exhibit No.	Description
10.4.2	<a href="#">2015 Equity Incentive Plan, incorporated by reference to Registrant's Registration Statement on Form S-8 (Commission File No. 333-204311).</a>
10.5	<a href="#">Employee Stock Purchase Plan, incorporated by reference to Registrant's Annual Report on Form 10-K for the year ended December 31, 2011.</a>
10.6	<a href="#">Lease Agreement between the Registrant and Wells Reit-Bridgewater NJ, LLC for the premises located at 200 Crossing Boulevard, Bridgewater, New Jersey, dated as of October 27, 2011, incorporated by reference to Registrant's Annual Report on Form 10-K for the year ended December 31, 2011.</a>
10.7†	<a href="#">Cingular Master Services Agreement, effective September 1, 2005 by and between the Registrant and Cingular Wireless LLC, incorporated by reference to Registrant's Annual Report on Form 10-K for the year ended December 31, 2008.</a>
10.8†	<a href="#">Subordinate Material and Services Agreement No. SG021306.S.025 by and between the Registrant and AT&amp;T Services, Inc. dated as of August 1, 2013, incorporated by reference to Registrant's Annual Report on Form 10-K for the year ended December 31, 2013, including order numbers SG021306.S.025.S.001, SG021306.S.025.S.002, SG021306.S.025.S.003 and SG021306.S.025.S.004, incorporated by reference to Registrant's Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2013.</a>
10.9†	<a href="#">Amendment 1 effective as of January 1, 2016 to Subordinate Material and Services Agreement No. SG021306.S.025 by and between the Registrant and AT&amp;T Services, Inc., incorporated by reference to Exhibit 10.9.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.10†	<a href="#">Order No. SG021306.S.025.S.007 effective as of January 1, 2016 by and between the Registrant and AT&amp;T Services, Inc., incorporated by reference to Exhibit 10.9.2 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.11†	<a href="#">Amendment No. 1 effective as of January 1, 2016 to Order No. SG021306.S.025.S.001 dated as of August 1, 2013 by and between the Registrant and AT&amp;T Services, Inc. together with Amended and Restated Order No. SG021306.S.025.S.001, incorporated by reference to Exhibit 10.9.3 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.12†	<a href="#">Amendment No. 2 effective as of January 1, 2016 to Order No. SG021306.S.025.S.002 dated as of August 1, 2013 by and between the Registrant and AT&amp;T Services, Inc., together with Amended and Restated Order No. SG021306.S.025.S.002, incorporated by reference to Exhibit 10.9.4 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.13†	<a href="#">Amendment No. 3 effective as of January 1, 2016 to Order No. SG021306.S.025.S.003 dated as of August 1, 2013 by and between the Registrant and AT&amp;T Services, Inc. incorporated by reference to Exhibit 10.9.5 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.14†	<a href="#">Amendment No. 4 effective as of January 1, 2016 to Order No. SG021306.S.025.S.003 dated as of August 1, 2013 by and between the Registrant and AT&amp;T Services, Inc., together with Amended and Restated Order No. SG021306.S.025.S.003, incorporated by reference to Exhibit 10.9.6 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.15†	<a href="#">Amendment No. 5 effective as of January 1, 2016 to Order No. SG021306.S.025.S.004 dated as of August 1, 2013 by and between the Registrant and AT&amp;T Services, Inc. together with Amended and Restated Order No. SG021306.S.025.S.004, incorporated by reference to Exhibit 10.9.7 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016.</a>
10.16†	<a href="#">Employment Agreement dated as of April 27, 2017 between the Registrant and Stephen G. Waldis.</a>
10.17†	<a href="#">Tier One Executive Employment Plan effective March 24, 2017.</a>
10.18†	<a href="#">Executive Employment Letter dated as of August 9, 2018 between the Registrant and David Clark, incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 filed on November 9, 2018.</a>
10.19†	<a href="#">Employment Agreement dated as of November 13, 2017 between the Registrant and Glenn Lurie, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 17, 2017.</a>
10.20	<a href="#">2017 New Hire Equity Incentive Plan, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 21, 2017.</a>
10.21	<a href="#">Application Service Provider Agreement retroactively effective as of April 1, 2013 by and between the Registrant and Verizon Sourcing LLC, incorporated by reference to Exhibit 10.12 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 filed on August 9, 2018.</a>
10.22	<a href="#">Change Request No 8 effective January 1, 2018 to SOW No. 1 Application Service Provider Agreement effective as of April 1, 2013 by and between the Registrant and Verizon Sourcing LLC, incorporated by reference to Exhibit 10.13 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 filed on August 9, 2018.</a>
10.23	<a href="#">Credit Agreement dated as of October 4, 2019 among Synchronoss Technologies, Inc. as the Borrower, the Lenders Party hereto, and Citizens Bank, N.A., as Administrative Agent Citizens Bank, N.A as Sole Lead Arranger and Sole Bookrunner</a>
21.1	<a href="#">List of subsidiaries, incorporated by reference to Exhibit 21.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2017 filed on July 2, 2018.</a>
23.1	<a href="#">Consent of Ernst &amp; Young, LLP, Independent Registered Public Accounting Firm.</a>
31.1	<a href="#">Certification of Principal Executive Officer pursuant to Rule 13a-14(a) of the Exchange Act, as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(a) of the Exchange Act, as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002</a>
32.1**	<a href="#">Certification of Principal Executive Officer pursuant to Rule 13a-14(b) of the Exchange Act and section 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2**	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(b) of the Exchange Act and section 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Labels Linkbase Document



<b>Exhibit No.</b>	<b>Description</b>
101.PRE	XBRL Presentation Linkbase Document

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† Compensation Arrangement.

‡ Confidential treatment has been granted with respect to certain provisions of this exhibit.

\*\* This certification is being furnished solely to accompany this Annual Report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

(b) Exhibits.

See (a)(3) above.

(c) Financial Statement Schedule.

## ITEM 16. FORM 10-K SUMMARY

None.

## SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

December 31, 2019, 2018, 2017

	Beginning Balance	Additions	Reductions	Ending Balance
	(In thousands)			
<b>Allowance for doubtful receivables:</b>				
2019	\$ 4,599	\$ 6,045	\$ (8,780)	\$ 1,864
2018	\$ 3,107	\$ 13,982	\$ (12,490)	\$ 4,599
2017	\$ 1,459	\$ 7,590	\$ (5,942)	\$ 3,107

	Beginning Balance	Additions	Reductions	Ending Balance
	(In thousands)			
<b>Allowance for loan loss:</b>				
2019	\$ 98,876	\$ —	\$ —	\$ 98,876
2018	\$ 14,562	\$ 84,314	\$ —	\$ 98,876

	Beginning Balance	Additions	Reductions	Ending Balance
	(In thousands)			
<b>Valuation allowance for deferred tax assets:</b>				
2019	\$ 81,064	\$ 3,843	\$ (11,561)	\$ 73,346
2018	\$ 32,523	\$ 49,610	\$ (1,069)	\$ 81,064
2017	\$ 14,180	\$ 23,370	\$ (5,027)	\$ 32,523

**SIGNATURES**

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

SYNCHRONOSS TECHNOLOGIES, INC.  
(Registrant)

/s/ Glenn Lurie

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**Glenn Lurie**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

March 16, 2020

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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Glenn Lurie Glenn Lurie	Chief Executive Officer (Principal Executive Officer)	March 16, 2020
/s/ David Clark David Clark	Chief Financial Officer (Principal Financial Officer) (Principal Accounting Officer)	March 16, 2020
/s/ Stephen Waldis Stephen Waldis	Director Executive Chairman	March 16, 2020
/s/ Laurie L. Harris Laurie L. Harris	Director	March 16, 2020
/s/ Kristin S. Rinne Kristin S. Rinne	Director	March 16, 2020
/s/ Mohan Gyani Mohan Gyani	Director	March 16, 2020
/s/ Robert Aqualina Robert Aqualina	Director	March 16, 2020
/s/ Frank Baker Frank Baker	Director	March 16, 2020
/s/ Peter Berger Peter Berger	Director	March 16, 2020
/s/ William J. Cadogan William J. Cadogan	Director	March 16, 2020
/s/ Thomas J. Hopkins Thomas J. Hopkins	Director	March 16, 2020

**DESCRIPTION OF SECURITIES REGISTERED UNDER SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

The following description of the common stock, par value \$0.0001 per share, of Synchronoss Technologies, Inc. (“us,” “our,” “we,” or the “Company”), which is the only security of the Company registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), summarizes certain information regarding the Common Stock in our amended and restated certificate of incorporation, our amended and restated by-laws and applicable provisions of Delaware general corporate law (the “DGCL”), and is qualified by reference to our restated certificate of incorporation and our amended and restated by-laws, as amended, which are incorporated by reference as Exhibit 3.1, Exhibit 3.2 and Exhibit 3.3, respectively, to the Annual Report on Form 10-K for the fiscal year ending December 31, 2019.

Our authorized capital stock consists of 100,000,000 shares of common stock, with a \$0.0001 par value per share, and 10,000,000 shares of preferred stock, with a \$0.0001 par value per share, 10,000 of which shares of preferred stock are designated Series A Convertible Participating Perpetual Preferred Stock.

**Common Stock**

Our common stock is listed on The Nasdaq Global Select Market under the symbol “SNCR.”

*Voting Rights.* Each holder of common stock is entitled to one vote per share on all matters submitted to a vote of stockholders. We have not provided for cumulative voting in the election of directors.

*Dividends.* The holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available, subject to preferences that may be applicable to preferred stock, if any, then outstanding.

*Liquidation and Dissolution.* In the event of a liquidation, dissolution or winding up of our company, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

*Other Rights.* The common stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

*Transfer Agent and Registrar.* The transfer agent and registrar for the Company’s common stock is American Stock Transfer & Trust Company.

**Anti-Takeover Effects of Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws**

Certain provisions of the DGCL, our restated certificate of incorporation and our amended and restated bylaws could have the effect of delaying, deferring or discouraging another party from acquiring control of us. These provisions, which are summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids.



**CREDIT AGREEMENT**

**dated as of October 4, 2019**

**among**

**SYNCHRONOSS TECHNOLOGIES, INC.,  
as the Borrower,**

**THE LENDERS PARTY HERETO,**

**and**

**CITIZENS BANK, N.A.,  
as Administrative Agent**

**CITIZENS BANK, N.A.,  
as Sole Lead Arranger and Sole Bookrunner**

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**CREDIT AGREEMENT**

CREDIT AGREEMENT, dated as of October 4, 2019, among SYNCHRONOSS TECHNOLOGIES, INC., a Delaware corporation (the “Borrower”), the LENDERS party hereto and CITIZENS BANK, N.A., as Administrative Agent.

RECITALS

A. The Borrower has requested that the Lenders make loans and other financial accommodations to the Borrower as more fully set forth herein.

B. The Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION Definitions. As used in this Credit Agreement, the following terms have the meanings specified below:

“ABR Borrowing” means, as to any Borrowing, the ABR Loans comprising such Borrowing.

“ABR Loan” means a Loan bearing interest based on the Alternate Base Rate.

“Acquired Entity or Business” means, for any period, any Person, property, business or asset acquired by the Borrower or any of its Subsidiaries in a Permitted Acquisition, to the extent not subsequently sold, transferred or otherwise Disposed of during such period.

“Acquisition” means any transaction or series of related transactions resulting, directly or indirectly, in: (a) the acquisition by any Person of (i) all or substantially all of the assets of another Person or (ii) all or substantially all of any business line, unit or division of another Person, (b) the acquisition by any Person (i) of in excess of 50% of the Equity Interests of any other Person, or (ii) otherwise causing any other Person to become a subsidiary of such Person, or (c) a merger, amalgamation consolidation, or any other combination of any Person with another Person (other than a Person that is a Loan Party or a Subsidiary of a Loan Party) in which a Loan Party or any of its Subsidiaries is the surviving Person.

“Adjusted LIBOR Rate” means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum equal to the LIBOR Rate in effect for such Interest Period multiplied by the Statutory Reserve Rate; provided, however, that the Adjusted LIBOR Rate shall at no time be less than 0% per annum.

“Administrative Agent” means Citizens Bank, in its capacity as administrative agent for the Lenders or any successor thereto.

“Administrative Agent’s Payment Office” means the Administrative Agent’s office located at 28 State Street, Boston MA 02109, or such other office as to which the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, 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.

“Agent Parties” has the meaning assigned to such term in Section 10.1(d)(iii).

“Agreement Date” means the first date appearing in this Credit Agreement.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% per annum and (c) the Adjusted LIBOR Rate in effect on such day for deposits in Dollars for a one-month Interest Period (subject to any interest rate floor set forth in the definition of “Adjusted LIBOR Rate”) plus 1.00% per annum, provided that the Alternate Base Rate shall at no time be less than 0% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent clearly manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBOR Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of the term Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate, respectively.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Loan Parties or their respective Subsidiaries from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” has the meaning assigned to such term in Section 5.18(c).

“Applicable Lending Office” means for any Lender, such Lender’s office, branch or affiliate designated for LIBOR Loans, ABR Loans or Letters of Credit or participations therein, as applicable, as notified to the Administrative Agent, any of which offices may be changed by such Lender.

“Applicable Margin” means, with respect to the Revolving Loans, L/C Participation Fees and Commitment Fees, during the applicable periods set forth below: in the case of (a) ABR Borrowings, the percentage per annum set forth in the following table under the heading “ABR Margin,” (b) LIBOR Borrowings and the L/C Participation Fees, the percentage per annum set forth in the following table under the heading “LIBOR Margin and L/C Participation Fee,” and (c) Commitment Fees, the percentage per annum set forth in the following table under the heading “Commitment Fees”:

Pricing Level	Consolidated Leverage Ratio	ABR Margin	LIBOR Margin and L/C Participation Fee	Commitment Fees
I	Greater than 2.50:1.00	1.50%	2.50%	0.30%
II	Greater than 2.00:1.00 but less than or equal to 2.50:1.00	1.25%	2.25%	0.25%
III	Greater than 1.50:1.00 but less than or equal to 2.00:1.00	1.00%	2.00%	0.20%
IV	Less than or equal to 1.50:1.00	0.75%	1.75%	0.20%

The Applicable Margin shall be determined and adjusted quarterly on the date (each a “Margin Determination Date”) that is five Business Days after receipt by the Administrative Agent of the Compliance Certificate pursuant to Section 6.1(c) for the most recently ended fiscal quarter of the Borrower (but in any event, not later than the 45<sup>th</sup> day after the end of each of the first three quarterly periods of each Fiscal

Year or the 90<sup>th</sup> day after the end of each Fiscal Year, as the case may be); provided that (a) the Applicable Margin shall be based on Pricing Level III until the Margin Determination Date for the first full fiscal quarter ending after the Closing Date, (b) if the Borrower fails to deliver the Compliance Certificate as required by Section 6.1(c) for the most recently ended fiscal quarter preceding the applicable Margin Determination Date, the Applicable Margin from such Margin Determination Date shall be based on Pricing Level I until the fifth Business Day after an appropriate Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Margin Determination Date. The Applicable Margin shall be effective from one Margin Determination Date until the next Margin Determination Date. Any adjustment in the Applicable Margin shall be applicable to all Loans then existing or subsequently made during the applicable period for which the relevant Applicable Margin applies. Notwithstanding the foregoing, in the event that any financial statement delivered pursuant to Section 6.1(a) or (b) or any Compliance Certificate delivered pursuant to Section 6.1(c) is inaccurate (regardless of whether (i) this Credit Agreement is in effect, or (ii) any of the Commitments are in effect, or (iii) any Loans or Letters of Credit are outstanding when such inaccuracy is discovered or such financial statement or Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall immediately deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Leverage Ratio in the corrected Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall immediately pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 2.8. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Section 3.1 and Section 8.1.

“Applicable Percentage” means, at any time (a) with respect to any Lender with a Commitment of any Class, the percentage equal to a fraction the numerator of which is the amount of such Lender’s Commitment of such Class and the denominator of which is the aggregate amount of all Commitments of such Class of all Lenders (provided that if the Commitments under the Revolving Facility have terminated or expired, the Applicable Percentages of the Lenders under the Revolving Facility shall be determined based upon the Revolving Exposure at such time of the determination pursuant to clause (b) below) and (b) with respect to the Loans of any Class, a percentage equal to a fraction the numerator of which is such Lender’s Outstanding Amount of the Loans of such Class and the denominator of which is the aggregate Outstanding Amount of all Loans of such Class.

“Appropriate Lenders” means, at any time, (a) with respect to the Revolving Facility, the Revolving Lenders, (b) with respect to any Letters of Credit, the L/C Issuer and the Revolving Lenders, and (c) with respect to any Incremental Term Facility, the Incremental Term Lenders.

“Approved Fund” means 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.

“Approved Line of Business” means, collectively, (a) those lines of business in which the Borrower and its Subsidiaries operate on the Closing Date (after giving effect to the Transactions occurring on the Closing Date) and (b) any business or activity that is the same, similar or otherwise reasonably related, ancillary, synergistic, complementary or incidental thereto.

“Assignment and Assumption” means 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 10.4) and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“Attorney Costs” means when referring to the Attorney Costs of (a) the Administrative Agent, all reasonable and documented fees and reasonable and documented out-of-pocket expenses, charges, disbursements and other charges of one law firm (and one local counsel in each relevant jurisdiction and one special or regulatory counsel for each relevant subject matter to the extent reasonably necessary) and (b) the Credit Parties other than the Administrative Agent, all reasonable and documented fees and reasonable and documented out of pocket expenses, charges, disbursements and other charges of one law firm for such Credit Parties and, solely in the case of an actual or potential conflict of interest, one additional counsel for such Credit Parties affected by such conflict of interest.

“Attributable Indebtedness” means, at any date, (a) in respect of any Financing Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Financing Lease, and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the annual report on Form 10-K containing the audited consolidated balance sheet of the Borrower and its Subsidiaries as of the last day of each of the three most recent Fiscal Years ended at least 90 days prior to the Closing Date and the related audited consolidated statements of income, comprehensive income, cash flows and shareholders’ equity of the Borrower and its Subsidiaries for each of the three most recent Fiscal Years ended at least 90 days prior to the Closing Date.

“Auto-Renewal Letter of Credit” has the meaning assigned to such term in Section 2.4(b)(iii).

“Availability Period” means, with respect to the Revolving Facility, the period from and including the Closing Date to but excluding the earlier of the Maturity Date with respect to the Revolving Facility and, if different, the date of the termination of the Revolving Commitments in accordance with the provisions of this Credit Agreement.

“Back-to-Back Letter of Credit” means a letter of credit, in form and substance reasonably satisfactory to the L/C Issuer and issued by an issuer reasonably satisfactory to the L/C Issuer.

“Backstopped” means, in respect of any Letter of Credit that remains outstanding on the applicable date, that the L/C Issuer shall have received (a) a Back-to-Back Letter of Credit and/or (b) cash or Cash Equivalents, provided that (i) the sum of the maximum drawable amount of such Back-to-Back Letter of Credit plus the amount of such cash and Cash Equivalents shall not be less than the Minimum

Collateral Percentage of the maximum drawable amount of such Letter of Credit, (ii) the arrangements with respect to such cash, Cash Equivalents and drawings on any Back-to-Back Letter of Credit allow the L/C Issuer to apply the same to reimburse itself with respect to drawings on, and other sums owing with respect to, such Letter of Credit, and (iii) the requirements under clauses (i) and (ii) of this defined term are in all respects satisfactory to the L/C Issuer.

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

“Bail-In Legislation” means, 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 that is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United State Code or any similar federal or state law for the relief of debtors.

“Beneficial Ownership Certification” means, with respect to the Borrower, a certification regarding beneficial ownership as 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 or such other form satisfactory to the Administrative Agent.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) 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”.

“Board” means the Board of Governors of the Federal Reserve System of the United States.

“Borrower” has the meaning assigned to such term in the Preamble.

“Borrowing” means Loans of the same Class, Type and currency made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means (a) in the case of a LIBOR Borrowing, \$500,000 and (b) in the case of an ABR Borrowing, \$100,000.

“Borrowing Multiple” means (a) in the case of a LIBOR Borrowing \$100,000 and (b) in the case of an ABR Borrowing, \$50,000.

“Business Day” means any day other than a Saturday, Sunday or day on which banks in New York City, New York are authorized or required by law to close; provided, however, that when used in connection with a LIBOR Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“Capital Expenditures” means, for any period, with respect to any Person, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability) by such Person and its subsidiaries for the acquisition or leasing (pursuant to a Financing Lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries (it being understood that “Capital Expenditures” shall not include any portion of the purchase price of a Permitted Acquisition that is required to be capitalized under GAAP).

“Capitalized Software” means, for any period, with respect to the Borrower, the aggregate of all capitalized software development costs included as intangible assets of the Borrower accrued during such period.

“Cash Collateralize” means to deposit in a Controlled Account or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if each of the Administrative Agent and the L/C Issuer shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral,” “Cash Collateralized” and “Cash Collateralization” shall have a meaning analogous to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means each of the following to the extent, except with respect to items described in clause (f) below, denominated in Dollars:

(a) debt obligations maturing within one year from the date of acquisition thereof to the extent the principal thereof and interest thereon is backed by the full faith and credit of the United States;

(b) commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or Moody’s;

(c) certificates of deposit, banker’s acceptances and time deposits maturing within 270 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or any state, commonwealth or other political subdivision thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 or, to the extent not otherwise included, any Lender, and which is rated at least A-2 by S&P and P-2 by Moody’s in the note or commercial paper rating category;

(d) repurchase agreements with a term of not more than 30 days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (c) of this definition;

(e) money market mutual funds, substantially all of the investments of which are in cash or investments contemplated by clauses (a), (b) and (c) of this definition; and

(f) with respect to any Foreign Subsidiary, (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, provided that such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, provided such country is a member of the Organization for Economic Cooperation and Development, and whose short term commercial paper rating from S&P is at least “A-1” or the equivalent thereof or from Moody’s is at least “P-1” or the equivalent thereof (any such bank being an “Approved Foreign Bank”), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank.

“Cash Management Obligations” means all obligations of the Loan Parties in respect of any Cash Management Services provided to any Loan Party (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Administrative Agent or any of its Affiliates, (b) owed on the Closing Date to a Person that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) owed to a Person that is a Lender or an Affiliate of a Lender at the time such obligations are incurred or becomes a Lender or an Affiliate of a Lender after it has incurred such obligations, provided that any such provider of Cash Management Services (other than the Administrative Agent or its Affiliates) executes and delivers a Secured Obligation Designation Notice to the Administrative Agent.

“Cash Management Services” means, collectively, (a) commercial debit or credit cards, merchant card processing and other services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including cash pooling arrangements, controlled disbursement, netting, overdraft, lockbox and electronic or automatic clearing house fund transfer services, return items, sweep and interstate depository network services, foreign check clearing services), and (c) any other demand deposit or operating account relationships or other cash management services.

“CEA Swap Obligation” means, with respect to any Guarantor, any obligation 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.

“Change in Law” means the occurrence, after the Agreement Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority or the compliance therewith by any Credit Party (or, for purposes of Section 3.4(b), by any Applicable Lending Office of such Credit Party or such Credit Party’s holding company, if any); provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines and 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 be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means (a) an event or series of events by which (a) any Person or group (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the Agreement Date) shall own directly or indirectly, beneficially or of record, shares representing more than 40% of the aggregate ordinary voting power or economic interests represented by the issued and outstanding Equity Interests of the Borrower on a fully diluted basis; or (b) occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower by persons who (i) were not members of the Board of Directors of the Borrower on the Effective Date and (ii) whose election to the Board of Directors of the Borrower or whose nomination for election by the stockholders of the Borrower was not approved by a majority of the members of the Board of Directors of the Borrower then still in office who were either members of the Board of Directors on the Effective Date or whose election or nomination for election was previously so approved.

“Citizens Bank” means Citizens Bank, N.A., a national banking association.

“Class,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Incremental Loans, and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or an Incremental Commitment.

“Closing Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived in accordance with Section 10.2).

“Code” means the Internal Revenue Code of 1986, and the rules and regulations issued thereunder.

“Collateral” means all the “Collateral” as defined in the Collateral Documents and all other property of whatever kind and nature pledged or charged, or purported to be pledged or charged, as collateral under any Collateral Document, and shall include the Mortgaged Properties; provided that the term Collateral shall exclude (a) any account, instrument, chattel paper or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Country or (b) any lease in which the lessee is a Sanctioned Person or Sanctioned Country.

“Collateral Access Agreement” means each landlord waiver, bailee waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, assignee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any Loan Party for any Real Property subject to a Mortgage or where any Collateral is located.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

- (a) the Administrative Agent shall have received each Collateral Document required to be delivered on the Closing Date pursuant to Section 4.1, or, following the Closing Date, pursuant to Section 6.12 or Section 6.14 (to the extent not delivered on the Closing Date), duly executed by each Loan Party that is a party thereto;
- (b) all Secured Obligations shall have been unconditionally guaranteed jointly and severally on a senior basis by the Guarantors;
- (c) except to the extent otherwise provided hereunder or under any Collateral Document, the Secured Obligations shall have been secured by a perfected first priority (subject to Liens expressly permitted pursuant to Section 7.2) security interest in, and Mortgages on, substantially all tangible and intangible assets of each Loan Party (including (i) accounts receivable, (ii) deposit accounts, commodity accounts and security accounts, which shall be, commencing 90 days after the Closing Date (or on such later date as the Administrative Agent may agree), Controlled Accounts except that no Excluded Account (as such term is defined in the Security Agreement) shall be required to be a Controlled Account, (iii) inventory, (iv) machinery and equipment, (v) investment property, (vi) cash, (vii) Intellectual Property, (viii) other general intangibles, (ix) Material Owned Real Property, (x) Pledged Debt, Pledged Debt Securities and Pledged Equity Interests (as such terms are defined in the Security Agreement) (xi) motor vehicles (provided that no action shall be required to be taken to perfect the security interest therein other than the filing of a UCC financing statement) and (xii) the proceeds of the foregoing), it being understood that in the case of the pledge of Equity Interests, the Administrative Agent shall have received all stock certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank; provided that the pledge of any shares in respect of any Subsidiaries that are not Wholly-Owned Subsidiaries shall be limited to the shares actually owned by the applicable pledger; provided further, that, notwithstanding the foregoing, the Secured Obligations shall not include any security interest in assets or debt or equity securities of any type related to Sequential Technology Holdings LLC or Sequential Technology International LLC;
- (d) the Secured Obligations shall have been secured by a first priority security interest in (i) all Indebtedness of the Borrower and each of its Subsidiaries that is owing to any Loan Party and (ii) all other Indebtedness owed to a Loan Party (other than any promissory notes issued to the Borrower by Sequential Technology Holdings LLC), which if evidenced by a promissory note or other instrument, shall have been pledged to the Administrative Agent, and in each case under clauses (i) and (ii), the Administrative Agent shall have received such promissory notes and other instruments together with note powers or other instruments of transfer with respect thereto endorsed in blank;
- (e) none of the Collateral shall be subject to any Lien other than Liens expressly permitted by Section 7.2;
- (f) the Administrative Agent shall have received a Perfection Certificate from the Borrower with respect to each Loan Party; and
- (g) the Mortgage Requirement shall have been satisfied.

The foregoing definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance or surveys with respect to, particular assets if and for so long as the Administrative Agent agrees in writing that the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance or surveys in respect of such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

The Administrative Agent may grant extensions of time for the perfection of security interests in or the obtaining of title insurance and surveys and the other requirements pursuant to this definition with respect to particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines (and without the consent of any other Secured Party), that, except as may be required by law, perfection or other requirements cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Credit Agreement or the Collateral Documents.

Notwithstanding the foregoing provisions of this definition or anything in this Credit Agreement or any other Loan Document to the contrary, (i) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth herein and in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between the Administrative Agent and the Borrower, (ii) in no event shall the Collateral include any Excluded Assets (as such term is defined in the Security Agreement), and (iii) notwithstanding anything to the contrary included in this definition, delivery of only the Collateral Documents required to be delivered by Section 4.1 shall be a condition precedent to the Credit Extensions on the Closing Date.

“Collateral Documents” means, collectively, the Security Agreement, each account control agreement, each Mortgage, each Collateral Access Agreement, each Copyright Security Agreement, each Patent Security Agreement, each Trademark Security Agreement, each Perfection Certificate, each agreement creating or perfecting rights in Cash Collateral and each other security agreement, instrument or other document executed or delivered pursuant to the Collateral and Guarantee Requirement, Section 6.12, Section 6.14 or the Security Agreement to secure any of the Secured Obligations.

“Commitment” means with respect to any Lender, such Lender’s Revolving Commitment and Incremental Commitment (if any).

“Commitment Fee” has the meaning assigned to such term in Section 3.2(a).

“Committed Loan Notice” means a notice of a Borrowing, a conversion of Loans from one Type to the other, or a continuation of LIBOR Loans pursuant to Section 2.2(a), which, if in writing, shall be substantially in the form of Exhibit B-1.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) and any successor statute.

“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 any L/C Issuer by means of electronic communications pursuant to Section 10.1, including through the Platform.

“Compliance Certificate” means a certificate, substantially in the form of Exhibit D.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, capitalized expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, the amortization of original issue discount and amortization of favorable or unfavorable lease assets or liabilities, of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated EBITDA” means, for any period (other than with respect to clause (vi) below), Consolidated Net Income of the Borrower and its Subsidiaries (collectively, the “Group Members”) for such period plus, (a) without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income (regardless of classification) for such period, the sum of:

(i) provisions for Taxes based on income (or similar Taxes in lieu of income Taxes), including federal, foreign, state, local, franchise, excise and similar Taxes and foreign withholding Taxes (including penalties and interest related to Taxes or arising from Tax examinations) of any such Group Member paid or accrued during such period;

(ii) consolidated interest expense and, to the extent not reflected in such consolidated interest expense, (x) any net losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, amortization or write-off of debt discount and (y) debt issuance costs and commissions, discounts and other fees and charges associated with indebtedness (including commitment, letter of credit, administrative fees and charges and legal fees and expenses with respect to the Loans and commitments hereunder);

(iii) Consolidated Depreciation and Amortization Expense of such Person and its Subsidiaries;

(iv) any non-recurring charges, expenses or losses; provided, that the amount added back pursuant to this clause (iv) in any period shall not exceed, when combined with any amounts added back pursuant to clause (vi) below, 15% of Consolidated EBITDA (determined before giving effect to such addbacks under clause (vi) and this clause (iv));

(v) any other non-cash charges, expenses or losses (except to the extent such charges, expenses or losses represent an accrual of or reserve for cash expenses in any future period or an amortization of a prepaid cash expense paid in a prior period);

(vi) the amount of pro forma “run rate” cost savings and other operating improvements and synergies quantifiable and identified by the Borrower in good faith and certified in writing to the Administrative Agent to be realized as a result of any acquisition (including the Transactions) or asset sale otherwise permitted hereunder (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or asset sale during such period, or from any operational change taken or committed to be taken during such period (in each case calculated on a pro forma basis as though such cost savings and other operating improvements and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions to the extent already included in the Consolidated Net Income for such period; provided that such actions have been taken or have been committed to be taken, and the benefits resulting therefrom are anticipated by the Borrower in good faith to be realized within 12 months after the completion of the related Acquisition or other business combination, acquisition, divestiture, restructuring, cost savings initiative or other initiative is consummated; provided, further, that the amount added back pursuant to this clause (vi) in any period shall not exceed, when combined with any amounts added back pursuant to clause (iv) above, 15% of Consolidated EBITDA (determined before giving effect to such addbacks under clause (iv) and this clause (vi));

(vii) cash expenses relating to earn-outs and similar obligations otherwise included in the definition of “Indebtedness”;

(viii) charges, losses, costs, expenses or write-offs to the extent indemnified or insured by a third party, including expenses covered by indemnification provisions in any agreement in connection with the Transactions, a Permitted Acquisition or any other acquisition permitted by the Loan Documents, to the extent actually reimbursed (and to the extent such reimbursement proceeds are not included in arriving at Consolidated Net Income);

(ix) any unrealized foreign currency translation losses resulting from the impact of foreign currency changes on the valuation of assets and liabilities of Borrower and its Subsidiaries, but only to the extent deducted in the calculation of Consolidated Net Income; and

(x) any Transaction Expenses paid on the Closing Date;

minus, (b) to the extent reflected as income or a gain in the statement of such Consolidated Net Income for such period, the sum of:

(i) (A) any other non-cash income or gains (other than the accrual of revenue in the ordinary course), but excluding any such items (i) in respect of which cash was received in a prior period or will be received in a future period or (ii) which represent the reversal in such period of any accrual of, or reserve for, anticipated cash charges in any prior period where such accrual or reserve is no longer required and (B) any net gains on hedging obligations or other derivative instruments entered into for the purposes of hedging interest rate risk;



(ii) non-cash income Taxes benefits or gains and other non-cash items added in the calculation of Consolidated Net Income (other than any such non-cash item (A) to the extent it is anticipated to result in the receipt of cash payments in any future period or in respect of which cash was received in a prior period or (B) which represents the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period);

(iii) net gains from discontinued or disposed operations (in the case of discontinued operations, solely to the extent incurred from the date such operations were held for sale in accordance with GAAP); and

(iv) any non-recurring income or gains;

plus, (c) proceeds actually received by the Group Members during such period from any business interruption insurance (to the extent such proceeds are not reflected as revenue or income in such statement of such Consolidated Net Income);

all of the foregoing as determined on a consolidated basis for the Group Members in conformity with GAAP; provided that, for purposes of calculating Consolidated EBITDA of the Group Members for any period, the Consolidated EBITDA of any person or properties constituting a division or line of business of any business entity, division or line of business, in each case, acquired by the Borrower or any of its Subsidiaries during such period and assuming any synergies, cost savings and other operating improvements (the “Pro Forma Adjustments”) to the extent factually supportable and certified by the Borrower as having been determined in good faith to be reasonably anticipated to be realizable within 12 months following the consummation of such acquisition, shall be included on a pro forma basis for such period (but assuming the consummation of such acquisition or such designation, as the case may be, occurred on the first day of such period). Notwithstanding anything to the contrary in the foregoing, the Consolidated EBITDA for each of the fiscal quarters ending September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be \$9,360,000, \$15,436,000, \$6,630,000 and \$8,669,000, respectively.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any Measurement Period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries, minus the aggregate amount of all Capital Expenditures (including any Capitalized Software) made in cash during such period (except to the extent financed with (A) the proceeds of Indebtedness (other than a Revolving Borrowing) or (B) net cash proceeds from any Disposition), minus the aggregate amount of all Restricted Payments paid in cash for such period, to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries. Notwithstanding anything to the contrary in the foregoing, Capital Expenditures (other than Capitalized Software and adjusted for the capital expenditure incurred for the build out of the Borrower’s company headquarters in Phoenix, Arizona) for each of the fiscal quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be \$4,750,000, \$3,086,000, \$1,470,000 and \$1,278,000, respectively (and provided that for the six-month period ending December 31, 2019 shall be up to \$1,437,000, to be allocated for each of the quarters in such period as applicable), and Capitalized Software for each of the fiscal quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be \$2,132,000, \$2,906,000, \$2,736,000 and \$3,255,000, respectively.

“Consolidated Fixed Charges” means, for any Person for any period, the sum, without duplication, of each of the following with respect to such Person, determined on a consolidated basis in accordance with GAAP:

(a) Consolidated Interest Expense of such Person for such period (excluding cash payments made prior to the Closing Date in connection with (i) those certain 0.75% Convertible Senior Notes due 2019 issued by the Borrower (which payments, for the avoidance of doubt, are \$862,500, \$186,115, \$422,570, \$66,136 and \$174,628 for the quarters ended September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2019 and September 30, 2019, respectively) and (ii) the Convertible Stock (which payments, for the avoidance of doubt, were \$7,075,309 for each of the quarters ended December 31, 2018 and March 31, 2019 (for dividends accrued in the quarters ended September 30, 2018 and December 31, 2018 respectively) and \$0 for each of the quarters ended March 31, 2019 and June 30, 2019 (for dividends accrued in the quarters ended December 31, 2019 and March 31, 2019, respectively)), plus

(b) the aggregate of all scheduled principal amounts that become payable during such period in respect of Indebtedness (excluding cash payments made prior to the Closing Date in connection with those certain 0.75% Convertible Senior Notes due 2019 issued by the Borrower (which payments, for the avoidance of doubt, are \$0, \$116,020,000, \$16,551,000, \$50,317,000 and \$47,112,000 for the quarters ended September 30, 2018, December 31, 2018, March 31, 2019, June 30, 2019 and September 30, 2019, respectively), but including the principal portion of Financing Lease Obligations); plus

(c) income or franchise taxes of the Borrower and its Subsidiaries paid or payable in cash during such period.

“Consolidated Interest Expense” means, with respect to any Person and its Subsidiaries for any period, the consolidated total interest expense of such Person and its Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including (without duplication), amortization of debt issuance costs and original issue discount, premiums paid to obtain payment, financial assurance or similar bonds, interest capitalized during construction, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments under Financing Leases and the implied interest component of Synthetic Lease Obligations (regardless of whether accounted for as interest expense under GAAP) (regardless of whether accounted for as interest expense under GAAP), all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs in respect of any obligations under any Swap Agreements constituting interest rate swaps, collars, caps or other arrangements requiring payments contingent upon interest rates of such Person and its Subsidiaries), plus or minus, as applicable, to the extent they would otherwise be included in interest expense under GAAP, unrealized gains and losses arising from derivative financial instruments issued by such Person for the benefit of such Person or its Subsidiaries, in each case determined on a consolidated basis for such period. For the avoidance of doubt, any dividends paid in kind on the Convertible Stock shall be excluded from the definition of Consolidated Interest Expense.

“Consolidated Leverage Ratio” means, with respect to any Measurement Period, the ratio of (a) Consolidated Total Debt of the Borrower and its Subsidiaries as of the last day of such Measurement Period to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such Measurement Period.

“Consolidated Net Income” means, for any Person (the “first Person”) for any period, the sum of net income (or loss) for such period of such first Person and its subsidiaries determined on a consolidated basis in accordance with GAAP, excluding, without duplication, to the extent included in determining such net income (or loss) for such period: (a) any income (or loss) of any other Person (the “second Person”) if such second Person is not a subsidiary of such first Person, except that such first Person’s equity in the net income of any second Person for such period shall be included in the determination of Consolidated Net Income up to the aggregate amount of cash actually distributed by such second Person during such period to such first Person or any of its subsidiaries as a dividend or other distribution, (b) the income (or loss) of any second Person accrued prior to the date it became a subsidiary of such first Person or is merged into or consolidated with such first person or any of its subsidiaries or such second Person’s assets are acquired by such first person or any of its subsidiaries, (c) extraordinary or unusual gains (or losses), (d) the income of any subsidiary of such first Person to the extent that the declaration or payment of dividends or similar distributions by such subsidiary of that income is prohibited by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such subsidiary, (e) the write-down of accounts receivable from Sequential Technology International, LLC upon the sale of such company following the determination of the write-down of such amounts by the Borrower and its auditors and (f) all non-cash adjustments made to translate foreign assets and liabilities for changes in foreign exchange rates made in accordance with ASC 830.

“Consolidated Total Debt” means, with respect to any Person and its Subsidiaries at any time and as determined on a consolidated basis and without duplication, an amount equal to the sum of Indebtedness of the type set forth in clauses (a), (b), (c), (e), (g), (h) and (k) of the definition thereof.

“Contested in Good Faith” means, with respect to any matter, that such matter is being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

“Contractual Obligation” means, 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” means 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 analogous thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors, managing general partners or any equivalent thereof.

“Controlled Account” means, as the context may require, a commodities account, deposit account and/or securities account that is subject to a Control Agreement (as defined in the Security Agreement) in form and substance satisfactory to the Administrative Agent and, with respect to Cash Collateral, the L/C Issuer.

“Controlled Foreign Corporation” means a controlled foreign corporation within the meaning of Section 957(a) of the Code.

“Convertible Stock” means the Borrower’s issued and outstanding Series A Convertible Participating Perpetual Preferred Stock held at any given time by Silver Private Holdings I, LLC; provided, however, no additional Convertible Stock shall be issued after the Closing Date other than paid-in-kind dividends to Silver Private Holdings I, LLC or its affiliates pursuant to the terms of the Convertible Stock.

“Copyright Security Agreement” has the meaning set forth in the Security Agreement.

“Credit Agreement” means this Credit Agreement.

“Credit Extension” means the making of a Loan or a L/C Credit Extension.

“Credit Facilities” means the Revolving Facility and any Incremental Term Facility; each, a “Credit Facility”.

“Credit Parties” means the Administrative Agent, the L/C Issuer and the Lenders.

“Debtor Relief Laws” means 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.

“Default” means any event or condition which constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means (a) when used with respect to the outstanding principal balance of any Loan, the sum of (i) the rate of interest otherwise applicable thereto plus (ii) 2.00% per annum, and (b) when used with respect to any L/C Borrowing or any interest, fee or other amount payable under the Loan Documents which shall not have been paid when due, the sum of (i) the Alternate Base Rate plus (ii) the Applicable Margin applicable to ABR Revolving Borrowings plus (iii) 2.00% per annum.

“Defaulting Lender” means, subject to Section 2.9(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two 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 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 L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer 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 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

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 holding company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) 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 or (iii) become the subject of a Bail-In Action; 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 holding 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 2.9(b)) upon delivery of written notice of such determination to the Borrower, the L/C Issuer and each Lender.

“Disposition” means, with respect to any Person, the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of Equity Interests including by way of a merger) by such Person to any other Person, with or without recourse, of (a) any notes or accounts receivable or any rights and claims associated therewith, (b) any Equity Interests of any Subsidiary (other than directors’ qualifying shares), or (c) any other assets, provided, however, that none of the following shall constitute a Disposition: (i) any sale, transfer, license, lease or other disposition by (A) a Loan Party to another Loan Party or (B) a Non-Loan Party Subsidiary to another Non-Loan Party Subsidiary, in each case, on terms which are no less favorable than are obtainable from any Person which is not one of its Affiliates, (ii) the collection of accounts receivable and other obligations in the ordinary course of business, (iii) sales of inventory in the ordinary course of business, and (iv) dispositions of substantially worn out, damaged, uneconomical, surplus or obsolete equipment, equipment that is no longer useful in the business of the Borrower or its Subsidiaries. Each of the terms “Dispose” and “Disposed” when used as a verb shall have an analogous meaning.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest of such Person which, by its terms, or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable, or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any rights of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the prior occurrence of the Termination Date), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date at the time such Equity Interests are issued.

“Dollars” or “\$” refers to lawful money of the United States.

“Domestic Subsidiary” means a Subsidiary that is incorporated or organized under the laws of the United States, any state, commonwealth or other political subdivision thereof (including, for the avoidance of doubt, the District of Columbia).

“Earn-Out Obligations” means, with respect to any Person, obligations of such Person that are recognized under GAAP as a liability of such Person, payable in cash or which may be payable in cash at the seller’s or obligee’s option arising from the acquisition of a business or a line of business (whether pursuant to an acquisition of Equity Interests or assets, the consummation of a merger or consolidation or otherwise) and payable to the seller or sellers thereof.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means 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.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.4(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.4(b)(iii)).

“Engagement Letter” means the Engagement Letter dated August 26, 2019, between the Borrower and Citizens Bank.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of liability, non-compliance or violation, investigations, proceedings, settlements, consent decrees, consent orders, consent agreements and all costs and liabilities relating to or arising from or under any Environmental Law, including (a) any and all claims by Governmental Authorities for enforcement, investigation, corrective action, cleanup, removal, response, remedial or other actions, cost recovery, damages, natural resource damages or penalties pursuant to or arising under any Environmental Law, (b) any and all claims by any one or more Persons seeking damages, contribution, restitution, indemnification, cost recovery, compensation or injunctive relief directly or indirectly resulting from, based upon or arising under Environmental Law, pertaining to Hazardous Materials or an alleged injury or threat of injury to human health, safety, natural resources, or the indoor or outdoor environment, and (c) all liabilities contingent or otherwise, expenses, obligations, losses, damages, fines and penalties arising under any Environmental Law.

“Environmental Law” means, collectively and individually any and all federal, state, local, or foreign statute, rule, regulation, code, guidance, ordinance, order, judgment, directive, decree, injunction or common law as now or previously in effect and regulating, relating to or imposing liability or standards of conduct concerning: the environment; protection of the environment and natural resources; air emissions; water discharges; noise emissions; the Release, threatened Release or discharge into the environment and physical hazards of any Hazardous Material; the generation, handling, management, treatment, storage, transport or disposal of any Hazardous Material or otherwise concerning pollution or the protection of the outdoor or indoor environment, preservation or restoration of natural resources, employee or human health or safety, and potential or actual exposure to or injury from Hazardous Materials.

“Environmental Liability” means, in respect of any Person, any statutory, common law or equitable liability, contingent or otherwise of such Person directly or indirectly resulting from, arising out of or based upon (a) the violation of any Environmental Law or Environmental Permit, or (b) an Environmental Claim.

“Environmental Permit” means any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

“Equity Interests” means, with respect to any Person, (a) shares of capital stock of (or other ownership or profit interests in) such Person, (b) 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, (c) securities (other than Indebtedness) 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 (d) all other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Sections 302 and 303 of ERISA and Sections 412 and 430 of the Code, is treated as a single employer under subsection (b), (c), (m) or (o) of Section 414 of the Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043(c) of ERISA with respect to a Pension Plan (other than an event for which the 30-day notice period referred to in Section 4043 of ERISA is waived); (b) the existence with respect to any Pension Plan of a non-exempt “prohibited transaction,” as defined in Section 406 of ERISA or Section 4975(c)(1) of the Code; (c) any failure of any Pension Plan to satisfy the “minimum funding standard” applicable to such Pension Plan under Section 412 or Section 430 of the Code or Section 302 or Section 303 of ERISA, whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, the failure to make by its due date a required installment under Section 430(j)(3) of the Code with respect to any Pension Plan or the failure of any Loan Party or ERISA Affiliate to make any required contribution to any Multiemployer Plan; (e) a determination that any Pension Plan is, or is expected to be, in “at-risk” status (as defined in Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA); (f) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan including the imposition of any Lien in favor of the PBGC or any Pension Plan (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA); (g) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or Section 4041A or ERISA, the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a Pension Plan administrator of any notice relating to an intention to terminate any Pension Plan or Pension Plans or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA or the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA or the termination of, or the appointment of a trustee to administrator, any Pension Plan; (h) any limitations under Section 436 of the Code become applicable; (i) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan or Multiemployer Plan; (j) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (k) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or in endangered or critical status within the meaning of Section 432 of the Code or Section 305 or Title IV of ERISA; or (l) the imposition on any Loan Party or any ERISA Affiliate of any tax under Chapter 43 of Subtitle D of the Code, or the assessment of a civil penalty on any Loan Party or any ERISA Affiliate under Section 502(c) of ERISA.

“EU Bail-In Legislation Schedule” means 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” has the meaning assigned to such term in Section 8.1.

“Excluded CEA Swap Obligation” means, with respect to any Guarantor, any CEA Swap Obligation if, and only to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such CEA 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), including by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such CEA Swap Obligation. If a CEA Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CEA Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Subsidiary” means (a) any Subsidiary that is prohibited by applicable law, rule or regulation or by any contractual obligation (to the extent such contractual obligation is existing (i) on the Closing Date or (ii) at the time of acquisition of such Subsidiary so long as the prohibition or restriction in such contract is not entered into in contemplation thereof) from providing a Guarantee of the Secured

Obligations or which would require governmental (including regulatory or any other Governmental Authority's) consent, approval, license or authorization to provide such a guaranty unless such consent, approval, license or authorization has been received, (b) to the extent providing a guaranty would reasonably be expected to cause a materially adverse tax consequence to the Borrower, (i) any Foreign Subsidiary, (ii) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary and (iii) any Foreign Subsidiary Holdco, (c) any captive insurance company, (d) any Subsidiary that is not a wholly-owned Subsidiary of the Borrower other than any wholly-owned Subsidiary that becomes a non-wholly-owned Subsidiary after the Closing Date as a result of (i) the disposition or issuance of Equity Interests of such Subsidiary in either case to a Person that is an Affiliate of the Borrower, (ii) the issuance of directors' qualifying shares, (iii) any transaction entered into for the principal purpose of causing such Subsidiary to cease to constitute a Guarantor or (iv) the disposition or issuance of Equity Interests of such Subsidiary for materially less than the fair market value of such Equity Interests (as reasonably determined by the Borrower), (e) any Immaterial Subsidiary and (f) any other Subsidiary with respect to which the Borrower and the Administrative Agent reasonably determine in writing the cost or other consequences of providing a Guarantee is excessive in view of the benefits of such Guarantee to be afforded to the Lenders therefrom. Notwithstanding the foregoing, in the event that an Excluded Subsidiary guarantees, grants a Lien on its assets to secure, or has greater than 65% of its voting Equity Interests pledged to secure, other Indebtedness of the Loan Parties, such Excluded Subsidiary shall cease to be an Excluded Subsidiary and shall be required to become a Subsidiary Guarantor.

"Excluded Taxes" means 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 3.7(b)) or (ii) such Lender changes its Applicable Lending Office, except in each case to the extent that, pursuant to Section 3.6, 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 Applicable Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.6(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Credit Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and 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" means, for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if such rate is not so published for any day, the Federal Funds Effective Rate for such day shall be the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Credit Agreement.

"Financial Covenants" means the covenants set forth in Section 7.12(a) through (c).

"Financial Officer" means, with respect to any Person, the chief financial officer, principal accounting officer, treasurer or comptroller of such Person (or such other financial officer as is acceptable to the Administrative Agent).

"Financing Lease Obligations" means, at the time any determination thereof is to be made, the amount of the liabilities in respect of Financing Leases that would at such time be required to be capitalized as a financing lease and reflected as a liability on a balance sheet prepared in accordance with GAAP.

"Financing Leases" means all leases that are required to be, in accordance with GAAP, recorded as finance leases; provided that for all purposes hereunder the amount of obligations under any Financing Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

"Fiscal Year" means the four fiscal quarter period of the Borrower ending on December 31 of each calendar year.

"Flood Certificate" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"Flood Documents" has the meaning set forth in Section 9.11.

"Flood Insurance Laws" means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Flood Insurance Policies" has the meaning set forth in Section 6.10(b).

"Flood Program" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“Flood Zone” means an area identified by the Federal Emergency Management Agency (or any successor agency) as a “Special Flood Hazard Area” with respect to which flood insurance has been made available under Flood Insurance Laws.

“Foreign Lender” means (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 Plan” means any employee pension benefit plan or arrangement (a) maintained, or contributed to by any Loan Party or Subsidiary that is not subject to the laws of the United States, or (b) mandated by a government other than the United States for employees of any Loan Party or Subsidiary.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Foreign Subsidiary Holdco” means any Domestic Subsidiary that owns no material assets other than the Equity Interests of one or more Foreign Subsidiaries that are Controlled Foreign Corporations.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to the L/C Issuer, such Defaulting Lender’s L/C Exposure other than such Defaulting Lender’s L/C Exposure that has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means 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.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any department, commission, board, bureau, 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 financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Group Member” has the meaning set forth in the definition of Consolidated EBITDA.

“Guarantee Agreement” means a guaranty agreement dated after the Closing Date among the Loan Parties and the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent.

“Guarantees” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guaranteed” has a meaning analogous thereto. The amount of any Guarantee at any time shall be deemed to be an amount equal to the lesser at such time of (i) the stated or determinable amount of the primary obligation in respect of which such Guarantee is made (or, if not stated or determinable, the maximum reasonably anticipated amount of the obligations in respect of which such Guarantee is made) and (ii) the maximum amount for which the guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee.

“Guarantors” means (a) each Subsidiary Guarantor, and (b) each other Person that becomes a party to the Guarantee Agreement as a Guarantor.

“Hazardous Materials” means all substances, wastes, chemicals, pollutants, or other contaminants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, mold, infectious, pharmaceutical or medical wastes and all other substances of any nature that are now or hereafter regulated under any Environmental Law or are now or hereafter defined, listed, classified, considered or described as hazardous, dangerous or toxic by any Governmental Authority or under any Environmental Law.

“Immaterial Subsidiary” means any Subsidiary (a) which generated less than two and one-half percent (2.5%) of Consolidated EBITDA of the Borrower and its Subsidiaries for the preceding twelve (12) month period or (b) had less than two and one half percent (2.5%) of consolidated assets of the Borrower and its Subsidiaries as reflected on the most recent financial statements delivered pursuant to Section 6.1 prior to such date; provided that no Subsidiary shall be excluded as an Immaterial Subsidiary until, and for so long as, the Borrower shall have designated such Subsidiary’s status as such in writing to the Administrative Agent; provided, further, that no Subsidiary shall be excluded as an Immaterial Subsidiary if (i) the Consolidated EBITDA of such Subsidiary, taken together with the Consolidated EBITDA of all other Subsidiaries then designated as Immaterial Subsidiaries, exceeds five percent (5%) of Consolidated EBITDA of the Borrower and its Subsidiaries or (ii) the consolidated assets of such Subsidiary, taken together with the consolidated assets of all other Subsidiaries then designated as Immaterial Subsidiaries, exceeds five percent (5%) of consolidated assets of the Borrower and its Subsidiaries.

“Incremental Assumption Agreement” means an Incremental Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, among the Borrower, the Administrative Agent and each Incremental Term Lender and/or existing or additional Revolving Lender party thereto.

“Incremental Commitments” has the meaning assigned to such term in Section 2.11(a).

“Incremental Term Facility” means a term loan credit facility evidenced by Incremental Term Loan Commitments, if any.

“Incremental Term Lender” means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

“Incremental Term Loan Commitment” means the commitment of any Lender, established pursuant to Section 2.11, to make an Incremental Term Loan to the Borrower.

“Incremental Term Loan Maturity Date” means the final maturity date of any Incremental Term Loan, as set forth in the applicable Incremental Assumption Agreement, provided that if such date is not a Business Day, the Incremental Term Loan Maturity Date shall be the Business Day immediately preceding such day.

“Incremental Term Loan Repayment Date” means each date regularly scheduled for the payment of principal of any Incremental Term Loan, as set forth in the applicable Incremental Assumption Agreement.

“Incremental Term Loan Note” means with respect to an Incremental Term Lender, a promissory note evidencing the Incremental Term Loans of such Incremental Term Lender payable to the order of such Incremental Term Lender (or, if required by such Incremental Term Lender, to such Incremental Term Lender and its registered assigns) substantially in form and substance satisfactory to the Incremental Term Lenders.

“Incremental Term Loans” means term loans made by one or more Lenders to the Borrower pursuant to an Incremental Assumption Agreement.

“Indebtedness” of any Person means, without duplication:

(a) all obligations of such Person for borrowed money;

(b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, including seller paper;

(c) the maximum amount (after giving effect to any prior drawings or reductions which have been reimbursed) of all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, surety bonds, and similar instruments issued or created by or for the account of such Person;

(d) the Swap Termination Value of each Swap Agreement (to the extent reflecting an amount owed by such Person or an amount that would be owing were such Swap Agreement terminated);

(e) the Attributable Indebtedness of such Person in respect of Financing Lease Obligations, Synthetic Debt and Synthetic Lease Obligations of such Person (regardless of whether accounted for as indebtedness under GAAP);

(f) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business which are paid within 120 days of their respective due dates, (ii) any purchase price adjustments, earn out or similar obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after becoming due and payable and (iii) liabilities associated with customer prepayments and deposits);

(g) indebtedness (excluding prepaid interest thereon) secured by a Lien (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by a Lien) on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(h) all Earn-Out Obligations due and owing of such Person;

(i) all obligations of such Person in respect of Disqualified Equity Interests;

(j) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted (e.g., take or pay obligations) or similar obligations and, without duplication, all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person; and

(k) all Guarantees by such Person of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, company, or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of Indebtedness of any Person for purposes of clause (g) shall be deemed to be equal to the greater of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“Indemnified Taxes” means (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” has the meaning assigned to such term in Section 10.3(b).

“Information” has the meaning assigned to such term in Section 10.14(b).

“Intellectual Property” has the meaning assigned to such term in the Security Agreement.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December, (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable thereto and, in the case of a LIBOR Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and (c) with respect to all Loans, the Maturity Date of the Credit Facility under which such Loan was made.

“Interest Period” means, with respect to any LIBOR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three, six or, if made available by all of the Appropriate Lenders, twelve months thereafter, as the Borrower may elect, provided that: (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences 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 of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (c) no Interest Period in respect of any Loan shall end after the Maturity Date of the Credit Facility under which such Loan was made. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Interpolated Screen Rate” means in relation to the LIBOR Rate for any Loan, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the rate as displayed on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Administrative Agent from time to time; in each case the “Screen Rate”) for the longest period (for which that Screen Rate is available) that is shorter than the applicable Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available) that exceeds such Interest Period, in each case, at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period.

“Investment” means, as to any Person, (a) any Acquisition by such Person, (b) any direct or indirect acquisition or investment by such Person in another Person, whether by means of the purchase or other acquisition of Equity Interests or debt or other securities of another Person (including any partnership or joint venture interest), or (c) any direct or indirect loan, advance or capital contribution to, Guarantee with respect to any Indebtedness or other obligation of, such other Person. For purposes of covenant compliance, the amount of any Investment on any date of determination shall be, in the case of any Investment in the form of (i) a loan or an advance, the principal amount thereof outstanding on such date, (ii) a Guarantee, the amount of such Guarantee as determined in accordance with the last sentence of the definition of such term, (iii) a transfer of Equity Interests or other property by the investor to the investee, including any such transfer in the form of a capital contribution, or the issuance of Equity Interests to such investor, the fair market value (as determined reasonably and in good faith by the chief financial officer of the Borrower) of such Equity Interests or other property as of the time of the transfer or issuance, without any adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment, and (iv) any Investment (other than any Investment referred to in clauses (i), (ii) or (iii) above) in the form of an Acquisition or a purchase or other acquisition for value of any evidences of Indebtedness or other securities of any other Person, the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus the cost of all additions, as of such date, thereto, and minus the amount, as of such date, of any portion of such Investment repaid to the investor in cash as a repayment of principal or a return of capital, as the case may be, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time of issuance)

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest Maturity Date of any Incremental Term Loan, in each case as extended in accordance with this Credit Agreement or pursuant to any other Loan Document from time to time.

“L/C Advance” has the meaning assigned to such term in Section 2.4(c)(iii).

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the applicable L/C Honor Date or refinanced as a Revolving Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance or renewal thereof or extension of the expiry date thereof, or the reinstatement or increase of the amount thereof or any amendment thereto.

“L/C Disbursement” means a payment made by the L/C Issuer pursuant to a Letter of Credit.

“L/C Exposure” means, with respect to any Revolving Lender at any time, its Applicable Percentage of the L/C Obligations.

“L/C Fronting Fee” has the meaning assigned to such term in Section 3.2(b)(ii).



“L/C Honor Date” has the meaning assigned to such term in Section 2.4(c)(i).

“L/C Issuer” means Citizens Bank in its capacity as issuer of Letters of Credit hereunder.

“L/C Obligations” means, at any time, with respect to all of the Revolving Lenders, the sum, without duplication, of (a) the undrawn portion of all Letters of Credit plus (b) the aggregate of all Unreimbursed Amounts in respect of Letters of Credit (unless refinanced as a Revolving Borrowing), including all L/C Borrowings.

“L/C Participation Fee” has the meaning assigned to such term in Section 3.2(b)(i).

“L/C Sublimit” means an amount equal to the lesser of (a) TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) and (b) the aggregate amount of the Revolving Commitments. The L/C Sublimit is a sublimit of the Revolving Commitments.

“Lead Arranger” means Citizens Bank, in its capacity as lead arranger and bookrunner of the credit facilities established under this Credit Agreement.

“Lenders” means (a) the financial institutions listed on Schedule 2.1 (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Assumption or pursuant to any Incremental Assumption Agreement.

“Letter of Credit” means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Documents” means, with respect to each Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any Letter of Credit Application and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or (b) any collateral for such obligations.

“Letter of Credit Expiration Date” means the day that is five (5) Business Days prior to the Maturity Date of the Revolving Facility (or, if such day is not a Business Day, the next preceding Business Day).

“LIBOR Borrowing” means, as to any Borrowing, the LIBOR Loans comprising such Borrowing.

“LIBOR Loan” means a Loan bearing interest based on the Adjusted LIBOR Rate.

“LIBOR Rate” means:

(a) with respect to each day during each Interest Period pertaining to a LIBOR Loan in Dollars, the rate per annum determined by the Administrative Agent to be the arithmetic average of the London Interbank Offered Rates administered by the ICE Benchmark Administration (or any Person that takes over administration of such rate) for deposits in Dollars for a duration equal to or comparable to the duration of such Interest Period which appear on the relevant Bloomberg page (or such other commercially available source providing quotations of the London Interbank Offered Rates for deposits in Dollars as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m. (London time) on the Quotation Day for such Interest Period; or

(b) for any interest calculation with respect to an ABR Loan on any date, rate per annum determined by the Administrative Agent to be the arithmetic average of the London Interbank Offered Rates administered by the ICE Benchmark Administration (or any Person that takes over administration of such rate) for deposits in Dollars with a term of one (1) month commencing such day which appear on the relevant Bloomberg page (or such other commercially available source providing quotations of the London Interbank Offered Rates for deposits in Dollars as may be designated by the Administrative Agent from time to time), at or about 11:00 am (London time) on such day;

provided that if such rate is not available at such time for any reason, then the “LIBOR Rate” with respect to such Loan for such period shall be the Interpolated Screen Rate, where applicable. Each calculation by the Administrative Agent of the LIBOR Rate hereunder shall be conclusive and binding on the parties hereto for all purposes, absent clearly manifest error. Notwithstanding the foregoing, for purposes of this Credit Agreement, the LIBOR Rate shall at no time be less than 0.00% per annum.

“LIBOR Scheduled Unavailability Date” has the meaning specified in Section 3.3(b).

“LIBOR Successor Rate” has the meaning specified in Section 3.3(b).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternate Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative and yield protection matters as may be appropriate, in the reasonable discretion of the Administrative Agent, to reflect the implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with then-prevailing market practice (or, if the Administrative Agent reasonably determines that implementation of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent reasonably determines in consultation with the Borrower).

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, Financing Lease or title retention agreement relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Liquidity” means, as of any date of determination, the sum of (a) the aggregate unused Revolving Commitment as of such date, (b) the aggregate amount of unrestricted domestic cash and Cash Equivalents on the balance sheet of the Loan Parties as of such date and (c) the aggregate amount of unrestricted non-domestic cash and Cash Equivalents on the balance sheet of the Loan Parties as of such date in an aggregate amount not to exceed \$5,000,000.

“Loan” means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Revolving Loan or an Incremental Term Loan.

“Loan Document Obligations” means the due and punctual payment and performance of all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party under or pursuant to each of the Loan Documents or otherwise with respect to any Loan or Letter of Credit and all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding.

“Loan Documents” means, collectively, this Credit Agreement, the Notes, the Guarantee Agreement, each Incremental Assumption Agreement, each Letter of Credit Application, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.10, the Engagement Letter, the Collateral Documents and each other document entered into in connection herewith.

“Loan Parties” means, collectively, the Borrower and the Subsidiary Guarantors.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement.”

“Material Adverse Effect” means (a) a material adverse effect on the business, assets, operations, liabilities or condition, financial or otherwise, of the Loan Parties and their respective Subsidiaries, taken as a whole, (b) the condition that results when the legality, validity or enforceability of any Loan Document is affected in a manner that is material and adverse to the Lenders, or (c) the condition that results when the ability of any Loan Party to perform any of its obligations under any Loan Document is affected in a manner that is material and adverse to the Lenders. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other than existing events would result in a Material Adverse Effect.

“Material Indebtedness” means, as of any date, Indebtedness (other than Indebtedness under the Loan Documents) or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties or any of their Subsidiaries in an aggregate principal amount exceeding the Threshold Amount. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be its Swap Termination Value.

“Material Owned Real Property” means each parcel of Real Property located in the United States which is acquired after the Closing Date by a Loan Party with a fair market value in excess of \$2,500,000.

“Maturity Date” means with respect to the Revolving Facility, the Revolving Maturity Date, and with respect to any Incremental Term Loan, the applicable Incremental Term Loan Maturity Date.

“Measurement Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been or are required to be delivered pursuant to Section 6.1(a) or Section 6.1(b) or, prior to the first such requirement, the four quarter period ended June 30, 2019. A Measurement Period may be designated by reference to the last day thereof (e.g. the June 30, 2019 Measurement Period refers to the period of four consecutive fiscal quarters of the Borrower ended June 30, 2019), and a Measurement Period shall be deemed to end on the last day thereof.

“Minimum Collateral Amount” means, as of any date, the aggregate amount of Cash Collateral required to be maintained with the Credit Parties as of such date pursuant to the terms of Section 2.10 and Section 8.2 of this Credit Agreement.

“Minimum Collateral Percentage” means 105%.

“MIRE Event” means if there are any Mortgaged Properties at any time, any increase, extension of the maturity or renewal of any of the Commitments or Loans (including any incremental credit facility 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).

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage Requirement” means, at any time, the requirement that, with respect to each Material Owned Real Property, the Administrative Agent shall have received the following, each in form and substance satisfactory to the Administrative Agent:

(a) a Mortgage with respect to such Material Owned Real Property duly executed and delivered by the record owner of such Material Owned Real Property,

- (b) an appraisal with respect to such Material Owned Real Property,
- (c) a survey with respect to such Material Owned Real Property,
- (d) a title insurance policy (including any endorsements thereto) and appropriate lien searches with respect to such Material Owned Real Property,
- (e) with respect to such Material Owned Real Property: environmental reports, audits and analyses (whether produced by any Loan Party or its Subsidiaries or any third party or Governmental Authority) and all existing Phase I or Phase II reports,
- (f) with respect to such Material Owned Real Property not located in a Flood Zone, a completed Flood Certificate from a third party vendor in compliance with the Flood Program,
- (g) with respect to any portion such Material Owned Real Property that is located in a Flood Zone:
  - (i) a completed Flood Certificate from a third party vendor in compliance with the Flood Program,
  - (ii) written acknowledgement from the Borrower that it received notification from the Administrative Agent that such Material Owned Real Property is located within a Flood Zone and indicating whether the community in which such Material Owned Real Property is located is participating in the Flood Program,
  - (iii) if such Material Owned Real Property is located in a community participating in the Flood Program, evidence that the Borrower has complied with the insurance requirements set forth in Section 6.10 of this Agreement,
  - (iv) such additional coverage as required by Administrative Agent, if any, under supplemental private insurance policies in an amount so required by the Administrative Agent, and
- (h) legal opinions with respect to such Mortgage and related matters.

“Mortgaged Property” means each parcel of Material Owned Real Property, if any, which shall be subject to a Mortgage delivered pursuant to Section 5.1(f) or Section 6.12, as applicable.

“Mortgages” means mortgages, deeds of trust, assignments of leases and rents, modifications and other collateral documents delivered pursuant to Section 5.1(f) or Section 6.12, each in form and substance reasonably satisfactory to the Administrative Agent.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 10.2 and (b) has been approved by the Required Lenders and, in the case of amendments that require the approval of all or all affected Lenders of a particular Class, Required Class Lenders of such Class.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Loan Party Subsidiary” means any Subsidiary of the Borrower that is not a Loan Party.

“Nonrenewal Notice Date” has the meaning assigned to such term in Section 2.4(b)(iii).

“Notes” means, collectively, the Revolving Loan Notes and any Incremental Term Loan Notes.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

“Organizational Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, 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” means 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 3.7(b)).

“Outstanding Amount” means (a) with respect to any Loan on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments thereof (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Borrowings as a Revolving Borrowing) occurring on such date and (b) with respect to any Letter of Credit, Unreimbursed Amount, L/C Borrowing or L/C Obligations on any date, the outstanding amount thereof on such date after giving effect to any related L/C

Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“Participant” has the meaning assigned to such term in Section 10.4(d).

“Participant Register” has the meaning assigned to such term in Section 10.4(d).

“Patent Security Agreement” has the meaning set forth in the Security Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Pension Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 or Section 430 of the Code or Section 302 or Section 303 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Perfection Certificate” means a perfection certificate in a form reasonably acceptable to the Administrative Agent.

“Permitted Acquisitions” means, collectively, each Acquisition which satisfies each of the following conditions:

(a) at the time of and immediately before and after giving Pro Forma Effect thereto, no Default shall have occurred and be continuing;

(b) such Acquisition shall be consensual and, if applicable, has been approved by the Acquisition target’s board of directors (or comparable governing body);

(c) the Person, assets or business unit acquired in the Acquisition shall be engaged in an Approved Line of Business;

(d) such Acquisition and all transactions related thereto shall be consummated in accordance with material laws, ordinances, rules, regulations and requirements of all Governmental Authorities;

(e) all actions, if any, required to be taken with respect to such newly created or acquired Subsidiary (including each Subsidiary thereof) or assets in order to satisfy the requirements set forth in the definition of the term “Collateral and Guarantee Requirement” to the extent applicable shall be taken (or arrangements for the taking of such actions reasonably satisfactory to the Administrative Agent shall have been made) within the time frames set forth in Section 6.12;

(f) to the extent required by the Collateral and Guarantee Requirement, (i) the property, assets, businesses and Equity Interests acquired in such Acquisition shall become Collateral and (ii) any newly created or acquired Subsidiary (other than an Excluded Subsidiary) shall become a Subsidiary Guarantor, in each case in accordance with Section 6.12;

(g) the aggregate cash consideration (excluding any amounts paid for with equity contributions from any direct or indirect equity holder of any Loan Party or any of its Subsidiaries) paid by any Loan Party or any of its Subsidiaries in connection with all such Acquisitions shall not exceed \$10,000,000 in the aggregate per Fiscal Year or \$30,000,000 in the aggregate during the term of the Credit Facility, provided that the aggregate cash consideration of Acquisitions of (i) Persons that do not become Guarantors as required pursuant to the “Collateral and Guarantee Requirement” or (ii) assets that are not made part of the Collateral as required pursuant to the “Collateral and Guarantee Requirement” that are acquired by the Borrower or a Guarantor, in each case, will be limited in an aggregate amount not to exceed \$5,000,000;

(h) after giving Pro Forma Effect to such Acquisition and, if applicable, the making of a Credit Extension in connection with such Acquisition, (i) the Loan Parties shall be in compliance with Section 7.12(b) of this Credit Agreement and (ii) the Consolidated Leverage Ratio shall not be greater than 0.50x lower than the Consolidated Leverage Ratio then permitted under Section 7.12(a) of this Credit Agreement, in each case for the most recently ended fiscal quarter (or Fiscal Year) for which financial statements were required to be delivered pursuant to Section 6.1(a) or Section 6.1(b), as applicable;

(i) not later than ten Business Days (or such shorter period as may be reasonably practicable, if approved by the Administrative Agent) prior to the consummation of any such Acquisition that is not funded solely with equity contributions, except with respect to an Acquisition in which the cash acquisition consideration is less than \$5,000,000, the Borrower shall have delivered to the Administrative Agent (i) a description of the proposed Acquisition and (ii) to the extent obtained and available, a quality of earnings report;

(j) to the extent the cash purchase price of any such Acquisition is not funded solely with equity contributions, the Borrower shall have delivered to the Administrative Agent within five Business Days after the Acquisition, fully executed copies of the acquisition agreements for such Acquisition together with all schedules thereto, and, to the extent required to be obtained under the terms of the acquisition agreements for such Acquisition, the applicable party under such acquisition agreements shall have received all required regulatory and third party approvals; and

(k) Liquidity shall be least \$15,000,000 after giving Pro Forma Effect to the Acquisition.

“Permitted Encumbrances” means:

(a) Liens imposed by law for taxes, assessments or other governmental charges that are not yet due or are being Contested in Good Faith, provided that enforcement of such Liens is stayed pending such contest;

(b) landlords', vendors', carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being Contested in Good Faith;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts (other than contracts for the payment of money), leases (other than Financing Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 8.1(k);

(f) easements, zoning restrictions, rights of way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligation and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Loan Parties and their respective Subsidiaries;

(g) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business, provided that the same do not in any material respect interfere with the business of the Loan Parties or their Subsidiaries or materially detract from the value of the relevant assets of the Loan Parties or its Subsidiaries;

(h) licenses, sublicenses, leases or subleases with respect to any assets granted to third Persons in the ordinary course of business, provided that the same do not in any material respect interfere with the business of the Loan Parties or their Subsidiaries or materially detract from the value of the relevant assets of the Loan Parties or their Subsidiaries;

(i) customary rights of set off, bankers' liens, refunds or charge backs, under deposit agreements, the Uniform Commercial Code or common law, of banks or other financial institutions where any Loan Party or any of such Loan Party's Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(j) Liens on Margin Stock to the extent that a prohibition on such Liens would violate Regulation U;

(k) Liens (i) on earnest money deposits made in cash by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted under this Credit Agreement or (ii) on amounts deposited as "security deposits" (or their equivalent) in the ordinary course of business in connection with actions or transactions not prohibited by this Credit Agreement;

(l) Liens in favor of customs and revenue authorities arising in the ordinary course of business as a matter of law to secure payment of customs duties in connection with the importation of goods;

(m) Liens resulting from the filing of precautionary UCC-1 financing statements (or equivalent) with respect to operating leases;

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Loan Party or any of its Subsidiaries in the ordinary course of business; and

(o) Liens incurred in the ordinary course of business imposed by law in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets;

provided that the term "Permitted Encumbrance" shall not include any Lien securing Indebtedness.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Platform" means DebtX, Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Prime Rate" means a rate per annum equal to the prime rate of interest announced from time to time by Citizens Bank or its parent company (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

"Pro Forma Basis" means, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the four-quarter period (or twelve month period, as applicable) ending as of the most recent quarter end (or month end, as applicable) preceding the date of such transaction for which financial statement information is available. Each of the terms "Pro Forma Compliance" and "Pro Forma Effect" shall have an analogous meaning.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning assigned to such term in Section 10.1(d)(i).

"Qualified Equity Interests" means, with respect to the Equity Interests of any Person, any Equity Interests other than Disqualified Equity Interests of such Person.

“Quotation Day” means, with respect to any LIBOR Borrowing and any Interest Period, the day that is two Business Days prior to the first day of such Interest Period.

“Real Property” means, collectively, all right, title and interest in and to any and all parcels of or interests in real property owned or leased by any Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership thereof.

“Recipient” means the Administrative Agent, any Lender or the L/C Issuer, as applicable.

“Refinancing Indebtedness” means Indebtedness of any Loan Party or its Subsidiaries arising after the Closing Date issued in exchange for, or the proceeds of which are used to extend, refinance, refund, replace, renew, continue or substitute for other Indebtedness (such extended, refinanced, refunded, replaced, renewed, continued or substituted Indebtedness, the “Refinanced Obligations”); provided that (a) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Refinanced Obligations (plus any interest capitalized in connection with such Refinanced Obligations, the amount of prepayment premium, if any, original issue discount, if any, and reasonable fees, costs, and expenses incurred in connection therewith), (b) such Refinancing Indebtedness shall have a final maturity that is no earlier than the final maturity date of such Refinanced Obligations, (c) such Refinancing Indebtedness shall have a Weighted Average Life to Maturity not less than the weighted average life to maturity of the Refinanced Obligations, (d) such Refinancing Indebtedness shall rank in right of payment no more senior than, and be subordinated (if subordinated) to the Secured Obligations on terms, taken as a whole, not materially less favorable to the Secured Parties than the Refinanced Obligations, (e) as of the date of incurring such Refinancing Indebtedness and after giving effect thereto, no Default shall exist or have occurred and be continuing, (f) if the Refinanced Obligations or any Guarantees thereof are unsecured, such Refinancing Indebtedness and any Guarantees thereof shall be unsecured, (g) if the Refinanced Obligations or any Guarantees thereof are secured, (i) such Refinancing Indebtedness and any Guarantees thereof shall be secured by substantially the same or less collateral, taken as a whole, as secured such Refinanced Obligations or any Guarantees thereof, on terms, taken as a whole, not materially less favorable to the Secured Parties and (ii) the Liens to secure such Refinancing Indebtedness shall not have a priority, taken as a whole, more senior than the Liens securing the Refinanced Obligations and if subordinated to any other Liens on such property, shall be subordinated, taken as a whole, to the Administrative Agent’s Liens on terms and conditions, taken as a whole, not materially less favorable to the Secured Parties, (h) the obligors in respect of the Refinanced Obligations immediately prior to such refinancing, refunding, extending, renewing, continuing, substituting or replacing thereof shall be the only obligors on such Refinancing Indebtedness, and (i) the terms and conditions (excluding as to pricing, premiums and optional prepayment or redemption provisions) of any such Refinancing Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties than the terms and conditions of the Refinanced Obligations.

“Register” has the meaning assigned to such term in Section 10.4(c).

“Regulation D” means Regulation D of the Board.

“Regulation T, U or X” means Regulation T, U or X, respectively, of the Board.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, members, directors, officers, employees, agents, trustees, administrators, managers, advisors, attorneys-in-fact and representatives of such Person and of such Person’s Affiliates.

“Release” means any actual or threatened releasing, spilling, leaking, pumping, pouring, leaching, seeping, emitting, migration, emptying, discharging, injecting, escaping, depositing, disposing, or dumping of Hazardous Materials into the indoor or outdoor environment, including the movement of any Hazardous Material through the air, soil, surface water, groundwater or property and any other conditions resulting in potential or actual human exposure to Hazardous Materials within a structure.

“Removal Effective Date” has the meaning assigned to such term in Section 9.6(b).

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice, and (b) with respect to a L/C Credit Extension, a Letter of Credit Application.

“Required Class Lenders” means, at any time with respect to any Class of Loans or Commitments, two or more unaffiliated Lenders having Total Credit Exposures with respect to such Class representing more than 50% of the Total Credit Exposures of all Lenders of such Class. The Total Credit Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

“Required Lenders” means, at any time, unaffiliated Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; provided, however, to the extent there is more than one Lender, Required Lenders must include two or more unaffiliated Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resignation Effective Date” has the meaning assigned to such term in Section 9.6(a).

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, or other similar officer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means, as to any Person, (a) any dividend or other distribution by such Person (whether in cash, securities or other property) with respect to any Equity Interests of such Person, (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the holders of Equity Interests of such Person, (c) the acquisition for

value by such Person of any Equity Interests issued by such Person or any other Person that Controls such Person, (d) any payment with respect to any Earn-out Obligation, and (e) with respect to clauses (a) through (d) any transaction that has a substantially similar effect.

“Revolving Borrowing” means a Borrowing consisting of Revolving Loans of the same Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

“Revolving Commitment” means, with respect to each Revolving Lender, the commitment hereunder of such Revolving Lender to make Revolving Loans and to acquire participations in Letters of Credit in an aggregate outstanding amount not exceeding the amount of such Revolving Lender’s Revolving Commitment as set forth on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Revolving Lender shall have assumed its Revolving Commitment in accordance with Section 10.4(b), as applicable, as such Revolving Commitment may be adjusted from time to time pursuant to Section 2.5 or pursuant to assignments by or to such Revolving Lender pursuant to Section 10.4. The initial aggregate amount of the Revolving Commitments on the Agreement Date is TEN MILLION DOLLARS (\$10,000,000).

“Revolving Exposure” means, as to any Lender at any time, the sum of (a) the Outstanding Amount of its Revolving Loans, plus (b) its L/C Exposure.

“Revolving Facility” means the credit facility established hereunder and evidenced by the Revolving Commitments.

“Revolving Lender” means a Lender having a Revolving Commitment or, if the Revolving Commitments have expired or terminated, having Revolving Exposure.

“Revolving Loan” means a loan referred to in Section 2.1 and made pursuant to Section 2.2.

“Revolving Loan Note” means with respect to a Revolving Lender, a promissory note evidencing the Revolving Loans of such Lender payable to the order of such Lender (or, if required by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit C.

“Revolving Maturity Date” means the third (3<sup>rd</sup>) anniversary of the Closing Date; provided that if such day is not a Business Day, the Revolving Maturity Date shall be the Business Day immediately preceding such day.

“S&P” means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc.

“Sale and Leaseback” means any transaction or series of related transactions pursuant to which any Loan Party or any of its Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

“Sanctioned Country” means any country, territory or region which is itself the subject or target of any comprehensive Sanctions (at the date of this Credit Agreement, the Crimean region of Ukraine, Cuba, Iran, North Korea, Darfur, South Sudan and Syria).

“Sanctioned Person” means (a) any Person or group listed in any Sanctions related list of designated Persons maintained by OFAC, including the List of Specially Designated Nationals and Blocked Persons, or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person subject to any law that would prohibit all or substantially all financial or other transactions with that Person or would require that assets of that Person that come into the possession of a third-party be blocked (c) any legal entity organized or domiciled in a Sanctioned Country, (d) any agency, political subdivision or instrumentality of the government of a Sanctioned Country, (e) any natural person ordinarily resident in a Sanctioned Country, or (f) any Person 50% or more owned, directly or indirectly, individually or in the aggregate by any of the above.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Secured Obligation Designation Notice” means a notice substantially in the form of Exhibit I executed and delivered to the Administrative Agent by a counterparty (other than the Administrative Agent and its Affiliates) to a Swap Agreement or an agreement to provide Cash Management Services in order that the obligations in respect thereof constitute Swap Agreement Obligations or Cash Management Obligations.

“Secured Obligations” means, collectively, (a) the Loan Document Obligations, (b) the Cash Management Obligations and (c) the Swap Agreement Obligations.

“Secured Parties” means, collectively, (a) the Administrative Agent, (b) each Lender, (c) the L/C Issuer, (d) each Person to whom any Cash Management Obligations are owed, (e) each counterparty to any Swap Agreement the obligations under which constitute Swap Agreement Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the permitted successors and assigns of each of the foregoing.

“Security Agreement” means the Pledge and Security Agreement, dated as of the Closing Date, among the Loan Parties and the Administrative Agent.

“Securitization Program” means an accounts receivable securitization program with Citibank, N.A. or another bank reasonably acceptable to the Administrative Agent related to accounts receivable owed to the Loan Parties by AT&T and/or Verizon, to the extent the accounts receivables sold pursuant to such securitization program are sold by the Loan Parties on customary terms and, other than as expressly permitted hereunder, on a non-recourse basis to the Loan Parties and their Subsidiaries.

“Sold Entity or Business” means any Person or any property or assets constituting a line of business or a division of a Person Disposed of in a transaction permitted hereunder by the Borrower or any of its Subsidiaries.

“Solvency Certificate” means a certificate, substantially in the form of Exhibit H.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the present assets of such Person and its Subsidiaries, taken as a whole, is not less than the sum of the debt (including contingent liabilities) of such Person and its Subsidiaries, taken as a whole, (b) the present fair salable value of the assets of such Person and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) of such Person and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured, (c) the capital of such Person and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person or its Subsidiaries, taken as a whole, contemplated as of such date and (d) such Person and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in the ordinary course of business; provided that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Transaction” means any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, Incremental Term Loan or Incremental Revolving Commitments, that by the terms of this Credit Agreement requires a test to be calculated on a “Pro Forma Basis,” be given in “Pro Forma Compliance” with, or after giving “Pro Forma Effect”; provided that any increase in the Revolving Commitments above the amount of Revolving Commitments in effect on the Closing Date, for purposes of this definition, shall be deemed to be fully drawn.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any basic, marginal, special, emergency, supplemental or other reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as “eurocurrency liabilities” in Regulation D). Such reserve percentages shall include those imposed pursuant to Regulation D. LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Debt” means Indebtedness incurred by a Loan Party that is subordinated in right of payment to the prior payment of the Loan Document Obligations of such Loan Party and contains subordination and other terms acceptable to the Administrative Agent.

“Subordinated Debt Documents” means any agreement, indenture or instrument pursuant to which any Subordinated Debt is issued, in each case as amended to the extent permitted under the Loan Documents.

“subsidiary” means, with respect to any Person (“Topco”), as of any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of Topco in Topco’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power is or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by Topco or one or more subsidiaries of Topco.

“Subsidiary” means any direct or indirect subsidiary of the Borrower or a Loan Party, as the context may require.

“Subsidiary Guarantors” means each Subsidiary that executes and delivers the Guarantee Agreement and each other Subsidiary of the Borrower that becomes party thereto by the execution and delivery of a Subsidiary Joinder Agreement, and the permitted successors and assigns of each such Person.

“Subsidiary Joinder Agreement” means a Subsidiary Joinder Agreement, substantially in the form of Exhibit E, pursuant to which a Subsidiary (other than an Excluded Subsidiary) becomes a party to the Guarantee Agreement, to the Security Agreement and to each other applicable Loan Document.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Agreement Obligations” means all obligations of the Loan Parties under each Swap Agreement to which any Loan Party is a party and that (a) is with a counterparty that is the Administrative Agent or any of its Affiliates, (b) is in effect on the Closing Date with a counterparty that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) is entered into after the Closing Date with any counterparty that is a Lender or an Affiliate of a Lender at the time such Swap Agreement is entered into or becomes a Lender or an Affiliate of a Lender after it has entered into such agreement, provided that any such counterparty (other than the Administrative Agent or its Affiliates) executes and delivers a Secured Obligation Designation Notice to the Administrative Agent and, provided, further, that Swap Agreement Obligations shall not include, with respect to any Guarantor, Excluded CEA Swap Obligations of such Guarantor.



“Swap Termination Value” means, 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 such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, 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 Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person at any time of determination under (i) a so called synthetic, off balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property, in each case, creating obligations that do not appear on the balance sheet of such Person but which could be characterized as the indebtedness of such Person (without regard to accounting treatment) (other than operating leases arising as a result of Sale and Leaseback transactions).

“Taxes” means 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.

“Termination Date” means the date upon which all Commitments have terminated, no Letters of Credit are outstanding (or if Letters of Credit remain outstanding, the same are Backstopped), and the Loans and L/C Obligations (other than with respect to the undrawn portion of outstanding Letters of Credit), together with all interest and fees related thereto and other Loan Document Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations in each case not yet due and payable), have been indefeasibly paid in full in cash.

“Threshold Amount” means \$2,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Exposure and outstanding Incremental Term Loans of such Lender at such time.

“Total Revolving Outstandings” means at any time, the aggregate Outstanding Amount of all Revolving Loans and L/C Obligations at such time.

“Trademark Security Agreement” has the meaning set forth in the Security Agreement.

“Transaction Expenses” means any fees, premiums, expenses or other costs incurred or paid by the Borrower, or any Subsidiary in connection with the Transactions, this Credit Agreement and the other Loan Documents and the transactions contemplated hereby and thereby in connection therewith.

“Transactions” means (a) the execution, delivery and performance by each Loan Party of each Loan Document to which it is a party, (b) the borrowing of the Loans and the issuance of the Letters of Credit, (c) the use of the proceeds of the Loans and the Letters of Credit, (d) the satisfaction of the Collateral and Guarantee Requirement and (e) the payment of Transaction Expenses.

“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

“Unaudited Financial Statements” means the quarterly report on Form 10-Q containing the unaudited consolidated balance sheets and related statements of income, comprehensive income, changes in equity and cash flows of the Borrower and its Subsidiaries, covering any of the first three fiscal quarters that have ended after the most recent Fiscal Year covered by the Audited Financial Statements and at least forty five (45) days before the Closing Date.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning assigned to such term in Section 2.4(c)(i).

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 3.6(g)(v).

“Voting Equity Interests” means, with respect to any Person, shares of such Person’s Equity Interests having the right to vote for the election of the members of the board of directors or other managing person of such Person under ordinary circumstances.

**“Weighted Average Life to Maturity”** means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

**“Wholly-Owned”** means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

**“Withdrawal Liability”** means a liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**“Withholding Agent”** means any Loan Party and the Administrative Agent.

**“Write-Down and Conversion Powers”** means, 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.

**Classification of Loans and Borrowings.** For purposes of this Credit Agreement, Loans may be classified and referred to by Class (e.g., a **“Revolving Loan”**) or by Type (e.g., a **“LIBOR Loan”**) or by Class and Type (e.g., a **“LIBOR Revolving Loan”**). Borrowings may also be classified and referred to by Class (e.g., a **“Revolving Borrowing”**) or by Type (e.g., a **“LIBOR Borrowing”**) or by Class and Type (e.g., a **“LIBOR Revolving Borrowing”**).

**Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Credit Agreement in its entirety and not to any particular provision hereof, (d) 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 Credit Agreement, (e) 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, and (f) 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, securities, accounts and contract rights. Any terms used in this Credit Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

**Accounting Terms; GAAP.**(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Credit Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Credit Agreement with respect to any period during which any Specified Transaction occurs, the Consolidated Leverage Ratio shall be calculated with respect to such period and all Specified Transactions occurring during such period on a Pro Forma Basis.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Credit Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Credit Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

**Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Credit 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).

**References to Time.** Unless the context otherwise requires, references to a time shall refer to Eastern Standard Time or Eastern Daylight Savings Time, as applicable.

**Resolution of Drafting Ambiguities.** Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation

and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Status of Loan Document Obligations. In the event that any Loan Party shall at any time issue or have outstanding any Subordinated Debt, the Borrower shall take or cause each other Loan Party to take all such actions as shall be necessary to cause the Loan Document Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Debt and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Debt. Without limiting the foregoing, the Loan Document Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of the Subordinated Debt Documents under which such Subordinated Debt is issued and are further given all such other designations as shall be required under the terms of any such Subordinated Debt in order that the Administrative Agent and the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Debt.

LLC Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws), (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time. Notwithstanding anything herein or any other Loan Document to the contrary, in the event that any Loan Party that is a limited liability company divides itself into two or more limited liability companies or series thereof, any limited liability companies or series thereof formed as a result of such division shall be required to comply with the obligations set forth in Section 6.12 and the other further assurances obligations set forth in the Loan Documents and become a Guarantor under this Agreement and the other Loan Documents.

## ARTICLE 2

THE CREDITSCommitments. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Revolving Lender agrees, severally and not jointly, to make Revolving Loans to the Borrower in Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Revolving Lender’s Revolving Exposure exceeding such Revolving Lender’s Revolving Commitment or (ii) the Total Revolving Outstandings exceeding the aggregate Revolving Commitments.

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Revolving Loans may be ABR Loans or LIBOR Loans, as further provided herein.

Borrowings, Conversions and Continuations of Loans.(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of LIBOR Loans shall be made upon the Borrower’s irrevocable notice, to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent substantially in the form of a Committed Loan Notice (i) in the case of an ABR Borrowing, not later than 11:00 a.m. on the date of the proposed Borrowing or (ii) in the case of any other Borrowing, not later than 11:00 a.m. three Business Days before the date of the proposed Borrowing.

(b) Each telephonic notice by the Borrower pursuant to Section 2.2(a) must be confirmed promptly by hand delivery or facsimile (or transmitted by electronic communication, if arrangements for doing so have been approved by the Administrative Agent) of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.4(c), each Borrowing or conversion of Loans shall be in a principal amount of the Borrowing Minimum or a whole multiple of the Borrowing Multiple in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (A) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of LIBOR Loans, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the Class and principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, (E) if applicable, the duration of the Interest Period with respect thereto which shall be a period contemplated by the definition of the term “Interest Period” and (F) the location and number of the Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of Section 2.2. Notwithstanding anything in this Credit Agreement to the contrary, if the Borrower:

(i) requests a Borrowing of, conversion to, or continuation of LIBOR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month; and

(ii) fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, continued as, or converted to, ABR Loans.

For avoidance of doubt, the Borrower and Lenders acknowledge and agree that any conversion or continuation of an existing Loan shall be deemed to be a continuation of that Loan with a converted interest rate methodology and not a new Loan. Any automatic conversion or continuation as provided above shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Loans.

(c) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion or continuation described in Section 2.2(b). In the case of each Borrowing, each Appropriate Lender shall make (or cause its Applicable Lending Office to make) the amount of its Loan available to the Administrative Agent, by transfer in immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.2 (and, if such Borrowing is the initial Credit Extension, Section 4.1), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by transfer to the account of the Borrower maintained with Citizens Bank and designated in the Commitment Loan Notice the amount of such funds.

(d) Except as otherwise provided herein, a LIBOR Loan may be continued or converted only on the last day of an Interest Period for such Loan unless the Borrower pays the amount due, if any, under Section 3.5 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that (i) no Loans may be requested as, converted to or continued as LIBOR Loans and (ii) unless repaid, each LIBOR Loan be converted to an ABR Loan at the end of the Interest Period applicable thereto.

(e) The Administrative Agent shall promptly notify the Borrower and the Appropriate Lenders of the interest rate applicable to any Interest Period for LIBOR Loans upon determination of such interest rate. The determination of the Adjusted LIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error.

(f) Anything in clauses (a) through (d) above to the contrary notwithstanding, after giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than six Interest Periods in effect at any time for all Borrowings of LIBOR Loans.

(g) The failure of any Appropriate Lender to make any Loan required to be made by it shall not relieve any other Appropriate Lender of its obligations hereunder, provided that the Commitments of the Lenders are several, and no Lender shall be responsible for any other Lender's failure to make Loans as required. All Borrowings made on the Closing Date must be made as ABR Borrowings unless the Borrower shall have given a Committed Loan Notice requesting a LIBOR Borrowing and provided an indemnity letter in form and substance satisfactory to the Administrative Agent extending the benefits of Section 3.5 to the Appropriate Lenders in respect of such Borrowings.

[Reserved].Letters of Credit.(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions hereof and of any additional Letter of Credit Documents required by the L/C Issuer and relying upon the representations and warranties herein set forth (A) based upon the agreements of the Revolving Lenders set forth in this Section 2.4, the L/C Issuer agrees (1) from time to time on any Business Day during the Availability Period to issue Letters of Credit denominated in Dollars for the account of the Borrower (provided that any Letter of Credit may be for the joint account of the Borrower and any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.4(b), and (2) to honor conforming drafts under the Letters of Credit and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.4; provided that the L/C Issuer shall not be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Revolving Lender shall be obligated to participate in any such Letter of Credit if immediately after giving effect to such L/C Credit Extension, (w) the aggregate L/C Obligations would exceed the L/C Sublimit, (x) the Revolving Exposure of any Revolving Lender would exceed such Revolving Lender's Revolving Commitment, or (y) the Total Revolving Outstandings would exceed the aggregate Revolving Commitments.

(ii) The L/C Issuer shall be under no obligation to issue any Letter of Credit (and, in the case of clauses (B), (C) or (D) below, shall not issue any Letter of Credit) if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or direct that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Agreement Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Agreement Date (for which the L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.4(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless arrangements satisfactory to the L/C Issuer for the Backstopping of such Letter of Credit have been made prior to the issuance thereof;

(D) the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country or (ii) in any manner that would result in a violation of any Sanctions by any party to this Credit Agreement;

(E) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit or any laws binding upon the L/C Issuer;

(F) the Letter of Credit is to be denominated in a currency other than Dollars;

(G) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.10(a)(iv)) with respect to such Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(H) the Letter of Credit is in an initial amount less than \$500,000 (or such lesser amount as agreed to by the L/C Issuer and the Administrative Agent).

(iii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter

of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower hand delivered or sent by facsimile (or transmitted by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least three Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day), (B) the amount, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder, (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, and (G) such other matters as the L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (1) the Letter of Credit to be amended, (2) the proposed date of amendment thereof (which shall be a Business Day), (3) the nature of the proposed amendment, and (4) such other matters as the L/C Issuer may reasonably request.

(ii) Subject to the terms and conditions set forth herein, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to have, and hereby irrevocably and unconditionally agrees to, acquire from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire risk participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer shall agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Auto-Renewal Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the renewal of such Auto-Renewal Letter of Credit from time to time to an expiry date not later than the Letter of Credit Expiration Date; provided that the L/C Issuer shall not permit any such renewal if (A) the L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.4(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone, followed promptly in writing, or in writing) on or before the day that is five (5) Business Days before the applicable Nonrenewal Notice Date from the Administrative Agent or any Revolving Lender, as applicable, or the Borrower that one or more of the applicable conditions specified in Section 4.2 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. On the Business Day on which the Borrower shall have received notice of any payment by the L/C Issuer under a Letter of Credit or, if the Borrower shall have received such notice later than 12:00 p.m. on any Business Day, on the succeeding Business Day (such applicable Business Day, the "L/C Honor Date"), the Borrower shall (regardless of whether or not such Letter of Credit shall be for the sole account of the Borrower or for the joint account of the Borrower and any Subsidiary) reimburse the L/C Issuer through the Administrative Agent in an amount equal to such drawing. If the Borrower fails to so reimburse the L/C Issuer on the L/C Honor Date (or if any such reimbursement payment is required to be refunded to the Borrower for any reason), then (x) the Borrower shall be deemed to have requested a Borrowing of ABR Revolving Loans in the amount of such drawing, and (y) the Administrative Agent shall promptly notify each Revolving Lender of the L/C Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Revolving Lender's Applicable Percentage thereof. Such Revolving Loans shall be made by the Revolving Lenders without regard to the Borrowing Minimums and Borrowing Multiples. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.4(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. For the avoidance of doubt, if any drawing occurs under a Letter of Credit and such drawing is not reimbursed on the same day, the Unreimbursed Amount of such drawing shall, without duplication, accrue interest for each day until the date of reimbursement at (x) prior to the third Business Day following the L/C Honor Date, the rate per annum applicable to the outstanding principal balance of ABR Revolving Loans pursuant to Section 3.1(a), and (y) thereafter, a rate per annum equal to the Default Rate applicable to the outstanding principal balance of ABR Revolving Loans.

(ii) Each Revolving Lender (including the Revolving Lender acting as the L/C Issuer) shall upon any notice pursuant to Section 2.4(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Payment Office in an amount equal to its Applicable Percentage of any Unreimbursed Amount in respect of a Letter of Credit in Dollars not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent. The Administrative Agent shall remit the funds so received to the L/C Issuer, and may apply Cash Collateral provided for this purpose to such Unreimbursed Amount.

(iii) Each Revolving Lender that makes funds available pursuant to Section 2.4(c)(ii), shall be deemed to have made an ABR Revolving Loan in Dollars to the Borrower in such amount, provided that in the event the conditions for Revolving Borrowings set forth in Section 4.2 cannot be satisfied (and have not been waived) or for any other reason, then (A) the Borrower shall be deemed to have incurred from the L/C Issuer a L/C Borrowing in Dollars in the amount of the Unreimbursed Amount, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate, and (B) such Revolving Lender shall be deemed to have purchased a participation in such L/C Borrowing in an amount equal to its Applicable Percentage thereof (a "L/C Advance").

(iv) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.4(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.4(c), shall be absolute and unconditional and shall not be affected by any circumstance; provided that each Revolving Lender's obligation to make Revolving Loans (but not L/C Advances) pursuant to this Section 2.4(c) is subject to the conditions set forth in Section 4.2 (other than delivery by the Borrower of a Committed Loan Notice). No such making of a L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.4(c) by the time specified in Section 2.4(c)(ii), the L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at the greater of the Federal Funds Effective Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.4(c) (vi) shall be conclusive absent manifest error.

(vii) If, at any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Revolving Lender's L/C Advance in respect of such payment in accordance with this Section 2.4(c), the Administrative Agent receives for the account of such Revolving Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(viii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.4(c) is required to be returned under any of the circumstances described in Section 10.11, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Lender, at a rate per annum equal to the Federal Funds Effective Rate.

(d) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with (x) any proceeding under any Debtor Relief Law or (y) any Bail-In Action;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guarantee Agreement or any other guarantee, for all or any of the Loan Document Obligations of any Loan Party in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the L/C Issuer's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(e) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, any of its Related Parties nor any of the correspondents, participants or assignees of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Required Lenders or the Required Class Lenders in respect of the Revolving Facility, as applicable, (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, any of its Related Parties nor any of the correspondents, participants or assignees of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (iii) of this Section 2.4(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(f) Conflict with Letter of Credit Application. Notwithstanding anything else to the contrary in any Letter of Credit Document (including any Letter of Credit Application), in the event of any conflict between the terms hereof and the terms of any such Letter of Credit Document, the terms hereof shall control, provided that all non-conflicting terms of any such Letter of Credit Document shall remain in full force and effect.

(g) Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Loan Party for, and the L/C Issuer's rights and remedies against any such Loan Party shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Credit Agreement, including the law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Termination and Reduction of Commitments.(a) Unless previously terminated, the Revolving Commitments shall terminate on the last day of the Availability Period. Any Incremental Term Loan Commitment shall terminate as provided in the applicable Incremental Assumption Agreement.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments, provided that (i) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment or repayment of the Revolving Loans in accordance with Section 2.7, the sum of the Revolving Exposures of all Revolving Lenders would exceed the aggregate Revolving Commitments, (ii) each such reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000, and (iii) any reduction of the Revolving Commitments to an amount below the L/C Sublimit shall automatically reduce the L/C Sublimit on a Dollar for Dollar basis. If at any time, as a result of such a partial reduction or termination as provided in Section 2.5(a), the Revolving Exposure of all Lenders would exceed the aggregate Revolving Commitments, then the Borrower shall on the date of such reduction or termination of Revolving Commitments, repay or prepay Revolving Borrowings and/or Cash Collateralize Letters of Credit in an aggregate amount equal to such excess.

(c) In addition to any termination or reduction of the Revolving Commitments under paragraphs (a) and (b) of this Section, the Revolving Commitments shall be reduced as required under Section 2.7(b).

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Revolving Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable, provided that a notice of termination of the Revolving Commitments may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied subject to the Borrower's obligation to indemnify the Lenders pursuant to Section 3.5. Each reduction, and any termination, of the Revolving Commitments shall be permanent and each reduction of the Revolving Commitments shall be made ratably among the Revolving Lenders in accordance with their respective Revolving Commitments.

Repayment of Loans; Evidence of Debt.(a) Payment at Maturity. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of (i) each Revolving Lender the then unpaid principal amount of each Revolving Loan together with all accrued interest thereon on the earlier of the Revolving Maturity Date and, if different, the date of the termination of the Revolving Commitments in accordance with the provisions of this Credit Agreement and (ii) each Incremental Term Lender, the then unpaid principal

amount of each Incremental Term Loan together with all accrued interest thereon on the earlier of the Maturity Date applicable to the Incremental Term Facility and, if different, the date of the acceleration of the Loans in accordance with Section 8.2.

(b) Amortization Payments for Incremental Term Loans. The Borrower shall pay to the Administrative Agent, for the account of the applicable Incremental Term Lenders with respect to Incremental Term Loans, on each Incremental Term Loan Repayment Date, a principal amount of the Incremental Term Loans (as adjusted from time to time pursuant to Section 2.7(a), Section 2.7(b)(iii) and Sections 2.11(d)) equal to the amount set forth in the applicable Incremental Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to, but excluding, the date of such payment.

(c) Notes. Any Lender may request through the Administrative Agent that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to (i) in the case of a Revolving Lender, a Revolving Loan Note and (ii) in the case of an Incremental Term Lender, an Incremental Term Loan Note. In addition, if requested by a Lender, its Note may be made payable to such Lender and its registered assigns in which case all Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 10.4) be represented by one or more Notes in like form payable to the order of the payee named therein and its registered assigns.

(d) Lender Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(e) Register. Entries made in good faith by the Administrative Agent in the Register pursuant to Section 10.4(c), and by each Lender in its account or accounts pursuant to Section 2.6(e), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Credit Agreement, absent manifest error; provided, however, that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Credit Agreement.

Prepayments.(a) Optional Prepayments. The Borrower may, upon written notice to the Administrative Agent, at any time and from time to time, voluntarily prepay any Borrowing of any Class in whole or in part without premium or penalty (except as set forth in Section 3.5), provided that (A) such notice must be received by the Administrative Agent not later than 1:00 p.m. (1) three Business Days prior to any date of prepayment of a LIBOR Borrowing and (2) one Business Day prior to the date of prepayment of an ABR Borrowing and (B) each prepayment shall be in a principal amount of the Borrowing Minimum or a whole multiple of the Borrowing Multiple in excess thereof or, in each case, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, provided that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied subject to the Borrower's obligation to indemnify the Lenders pursuant to Section 3.5. Each prepayment of Incremental Term Loans pursuant to this Section 2.7(a) shall be applied to the installments thereof as set forth in the applicable Incremental Assumption Agreement, such prepayment shall be applied against the scheduled repayments of the Incremental Term Loans under Section 2.6 in the inverse order of maturity of such remaining scheduled installments and shall be paid to the Administrative Agent for the account of the Appropriate Lenders in accordance with their respective Applicable Percentages).

(b) Mandatory Prepayments. In the event that a Change of Control occurs, the Borrower, substantially simultaneously with such Change of Control, shall pay to the Administrative Agent for the account of (i) each Revolving Lender the then unpaid principal amount of each Revolving Loan together with all accrued but unpaid interest thereon (with a permanent reduction in the Revolving Commitments), (ii) each Incremental Term Lender, the then unpaid principal amount of each Incremental Term Loan together with all accrued interest thereon and (iii) all other fees and expenses due hereunder as of such date.

(c) Prepayments of Revolving Loans. If for any reason the Total Revolving Outstandings at any time exceed the aggregate Revolving Commitments then in effect, the Borrower shall immediately prepay, without premium or penalty, Revolving Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess.

(d) General Rules. All prepayments shall be subject to Section 3.5, but shall otherwise be without premium or penalty. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. All prepayments shall be accompanied by accrued interest thereon and, in the case of any prepayment of a LIBOR Loan, any additional amounts required pursuant to Section 3.5.

Payments Generally; Administrative Agent's Clawback.(a) General. Each Loan Party shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal of Loans, L/C Borrowings, interest or fees, or of amounts payable under Sections 3.4, 3.5, 3.6 or 10.3, or otherwise) prior to 12:00 noon on the date when due, in immediately available funds. All payments to be made by a Loan Party hereunder shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent's Payment Office, except payments to be made to the L/C Issuer as expressly provided herein and except that payments pursuant to Sections 3.4, 3.5, 3.6 or 10.3, shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.



(b) Pro Rata Treatment. Except as otherwise provided in this Section 2.8 and as otherwise required under Section 3.4(e), each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of fees, each reduction of the Revolving Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Appropriate Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans of the applicable Class). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

(c) Administrative Agent's Clawback. (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender, prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.2 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the Appropriate 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 such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, 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, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. 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.

(ii) Payments by Borrower; Presumptions by Administrative Agent. 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 L/C Issuer 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 L/C Issuer, 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 L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, 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.

(iii) Notice by Administrative Agent. A notice from the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this paragraph (c) shall be conclusive, absent manifest error.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and purchase participations in Letters of Credit and to make payments pursuant to Section 10.3(c) are several and not joint. The failure of any Lender to make any Loan or purchase participations in Letters of Credit or make any payment under Section 10.3(c) 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, purchase its participation in Letters of Credit or to make its payment under Section 10.3(c).

(e) Failure to Satisfy Conditions Precedent. 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 Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the borrowing of Loans set forth in Article 5 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(f) Funding Source. 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.

(g) Insufficient Payment. Subject to the provisions of Article 8, whenever any payment received by the Administrative Agent under this Credit Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Credit Parties under or in respect of this Credit Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent (i) first, towards payment of all fees and expenses due to the Administrative Agent under the Loan Documents, (ii) second, towards payment of all expenses then due hereunder, ratably among the parties entitled thereto in accordance herewith, (iii) third, towards payment of interest, fees and commissions then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and commissions then due to such parties, and (iv) fourth, towards payment of principal of Loans and unreimbursed L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal of Loans and unreimbursed L/C Borrowings then due to such parties.

(h) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then such Lender shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided 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 Credit 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 of or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant.

The Borrower consents 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.

Defaulting Lenders.(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Credit 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 Credit Agreement shall be restricted as set forth in the definition 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 voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.8 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 L/C Issuer hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.10; fourth, as the Borrower may request (so long as no 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 Credit 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 in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Credit Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Credit Agreement, in accordance with Section 2.10; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; seventh, so long as no Default exists, 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 Credit Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings 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 Borrowings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.9(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 2.9(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 Commitment Fee for any period during which that 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 that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Participation Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.10.

(C) With respect to any L/C Participation Fees 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 L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. If any L/C Obligations are outstanding at the time such Lender becomes a Defaulting Lender, then all or any part of the L/C Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.17, 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.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each L/C Issuer 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), that 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 to be held pro rata by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.9(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 that 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 that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the L/C Issuer 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 after giving effect thereto.

Cash Collateral.(a) Certain Credit Support Events. The Borrower shall provide Cash Collateral to the L/C Issuer:

(i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in a L/C Borrowing, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Percentage of the principal amount of such L/C Borrowing,

(ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, immediately (without the necessity of any request), in an amount not less than the Minimum Collateral Percentage of such L/C Obligation,

(iii) if the Borrower shall be required to provide Cash Collateral pursuant to Section 8.2, immediately upon any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Percentage of all L/C Obligations,

(iv) if there shall exist a Defaulting Lender, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Percentage of the Fronting Exposure of the L/C Issuer with respect to such Defaulting Lender, and

(v) if on any date, the L/C Obligations exceed the L/C Sublimit, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Percentage of such excess.

(b) Grant of Security Interest. As security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.10(c), (i) the Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (and shall enter into documentation reasonably satisfactory to the Administrative Agent for such purpose), and shall thereafter maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, and (ii) to the extent provided by any Defaulting Lender, such Defaulting Lender hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing. 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 the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower 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. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Citizens Bank. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Credit Agreement, Cash Collateral provided under any of this Section 2.10 or Sections 2.4, 2.7, 2.10 or 8.2 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Lender that is 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 or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.4(b)(vii))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided that, subject to this Section 2.10, the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

Incremental Commitments.(a) The Borrower may, from time to time, by written notice to the Administrative Agent, request Incremental Term Loan Commitments and/or additional Revolving Commitments, as applicable (collectively, "Incremental Commitments"), from one or more Lenders (in the sole discretion of such Lenders) or Eligible Assignees who will become Lenders, in an aggregate principal amount of up to \$10,000,000; provided that at the time of the incurrence of such Incremental Commitments and immediately after giving effect thereto and to the use of the proceeds thereof (assuming the full utilization thereof), (A) no Default shall have occurred and be continuing or would result therefrom, (B) the Borrower shall be in compliance with the financial covenants set forth in Section 7.12, and (C) the Consolidated Leverage Ratio shall be less than or equal to 0.50x less than the maximum Consolidated Leverage Ratio (before and after giving effect thereto on a Pro Forma Basis) permitted pursuant to Section 7.12(a); provided, further, that each such person, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent and, in connection with any additional Revolving Commitment, the L/C Issuer (which approval shall not be unreasonably withheld, conditioned or delayed). Such notice shall set forth (i) the

amount of the Incremental Term Loan Commitments or additional Revolving Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$5,000,000), (ii) the date on which such Incremental Term Loan Commitments and/or additional Revolving Commitments are requested to become effective (which shall not be less than ten Business Days nor more than 60 calendar days after the date of such notice, unless otherwise agreed to by the Administrative Agent). All Incremental Term Loans shall be made in Dollars.

(b) The Borrower and each Incremental Term Lender and/or additional Revolving Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Commitment of such Lender. Subject to clause (c) below, each Incremental Assumption Agreement in respect of Incremental Term Loan Commitments shall specify the terms of the Incremental Term Loans to be made thereunder. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Assumption Agreement, this Credit Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Commitments evidenced thereby. Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed) and furnished to the other parties hereto.

(c) The terms of each Incremental Term Loan and, as applicable, each additional Revolving Commitment shall be reasonably satisfactory to the Administrative Agent and in any event:

(i) shall rank *pari passu* in right of payment and of security with any existing Revolving Loans;

(ii) in the case of Incremental Term Loans, shall not mature earlier than the Maturity Date;

(iii) in the case of Incremental Term Loans, subject to clause (ii) above, shall have amortization determined by the Borrower and the applicable Incremental Term Lenders;

(iv) in the case of Incremental Term Loans, shall have an Applicable Margin equal to the Applicable Margin applicable to the Revolving Commitment hereunder;

(v) in the case of Incremental Term Loans, may have customary mandatory prepayments for loans of this type as determined by the Borrower and the applicable Incremental Term Lenders; and

(vi) all material terms of any additional Revolving Commitments and Revolving Loans under such additional Revolving Commitments shall be identical to the existing Revolving Commitments and Revolving Loans.

(d) No Incremental Term Loan Commitments or additional Revolving Commitments shall become effective under this Section 2.11 unless, on the date of such effectiveness, (i) the conditions set forth in paragraphs (a) and (b) of Section 4.2 shall be satisfied as if it was a borrowing date and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower; and (ii) the Administrative Agent shall have received (with sufficient copies for each of the Incremental Term Lenders and/or additional Revolving Lenders) closing certificates, opinions of counsel and other customary documentation requested by the Administrative Agent.

(e) In connection with any such additional Revolving Commitments, each existing Revolving Lender (other than a Defaulting Lender) that shall have agreed to provide an Incremental Commitment in connection therewith shall have the right, subject to the other terms and conditions of this Section 2.11, to provide a portion of such Incremental Commitment in an amount equal to (i) its Applicable Percentage of the existing Revolving Commitments, multiplied by (ii) the amount of such Incremental Commitment. In connection with any such Incremental Term Loan Commitments, each existing Incremental Term Lender (other than a Defaulting Lender), if any, that shall have agreed to provide an Incremental Commitment in connection therewith shall have the right, subject to the other terms and conditions of this Section 2.11, to provide a portion of such Incremental Term Loan Commitments in an amount equal to (i) a fraction, the numerator of which is the Outstanding Amount of such Incremental Term Lender's Incremental Term Loans, and the denominator of which is the Outstanding Amount of all Incremental Term Loans of all Incremental Term Lenders, multiplied by (ii) the amount of such Incremental Commitment.

(f) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans, when originally made, are included in each Borrowing of outstanding Incremental Term Loans on a pro rata basis and that following the establishment of any additional Revolving Commitments, the outstanding Revolving Loans are held by the Revolving Lenders in accordance with their new Applicable Percentages. This may be accomplished at the discretion of the Administrative Agent by requiring each outstanding LIBOR Borrowing of the relevant Class to be converted into an ABR Borrowing of such Class on the date of each Incremental Term Loan or additional Revolving Commitment, or by allocating a portion of each Incremental Term Loan to each outstanding LIBOR Term Borrowing of the same Class on a pro rata basis, even though as a result thereof such Incremental Term Loan may effectively have a shorter Interest Period than the Incremental Term Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of this Credit Agreement that would prohibit such an initial Interest Period), or requiring a prepayment and reborrowing of Revolving Loans. Any conversion or prepayment made pursuant to the preceding sentence shall be subject to Section 3.5 (it being understood that, the Administrative Agent shall consult with the Borrower regarding the foregoing and, to the extent practicable, will attempt to pursue options that minimize breakage costs).

### ARTICLE 3

#### INTEREST, FEES, YIELD PROTECTION, ETC. Interest.

(a) Interest Rate Generally. All ABR Loans shall bear interest at the Alternate Base Rate plus the Applicable Margin. Each LIBOR Loan shall bear interest at a rate per annum equal to the sum of the Adjusted LIBOR Rate for the Interest Period in effect for such Loan plus the Applicable Margin.

(b) Default Rate.

(i) Notwithstanding the foregoing, if any principal of or interest on any Loan, any reimbursement obligation in respect of any L/C Disbursement or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate to the fullest extent permitted by applicable law.

(ii) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower (provided that no such notification shall be required, and the following interest shall automatically be payable, in the case of an Event of Default under Sections 8.1(a), (b), (h) or (i)), then, so long as such Event of Default is continuing, all outstanding principal of each Loan and all Unreimbursed Amounts in respect of L/C Disbursements (including L/C Borrowings) shall, without duplication of amounts payable under the preceding sentence, bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate to the fullest extent permitted by applicable law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and at such other times as may be specified herein, provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any LIBOR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(d) Computation of Interest. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBOR Rate and LIBOR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent clearly manifest error.

Fees.(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender, a commitment fee (the "Commitment Fee"), which shall accrue at a rate per annum equal to the Applicable Margin on the average daily unused amount of the Revolving Commitment of such Revolving Lender during the period from and including the date on which this Credit Agreement becomes effective pursuant to Section 10.6(a) to but excluding the date on which such Revolving Commitment terminates; provided that, if such Revolving Lender continues to have any Revolving Exposure after its Revolving Commitment terminates, the Commitment Fee shall continue to accrue on the daily amount of such Revolving Lender's Revolving Exposure from and including the date on which such Revolving Lender's Revolving Commitment terminates to but excluding the date on which such Revolving Lender ceases to have any Revolving Exposure. For purposes of computing Commitment Fees, the Revolving Commitment of any Revolving Lender shall be deemed to be used to the extent of the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's L/C Exposure. Accrued Commitment Fees shall be payable in arrears on the last day of March, June, September and December of each year, each date on which the Revolving Commitments are permanently reduced and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Agreement Date. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) L/C Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of the Revolving Lenders a fee (the "L/C Participation Fee") in Dollars for each standby Letter of Credit, at a rate per annum equal to the Applicable Margin multiplied by the average daily amount available to be drawn under such Letter of Credit and (ii) to the L/C Issuer for its own account a fee (the "L/C Fronting Fee"), which shall accrue at the rate or rates per annum equal to 0.125% multiplied by the average daily amount of the L/C Obligations (excluding any portion thereof attributable to unreimbursed L/C Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any L/C Obligations, as well as the L/C Issuer's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued L/C Participation Fees and L/C Fronting Fees shall be payable in arrears on the last day of March, June, September and December of each year, commencing on the first such date to occur after the Agreement Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the L/C Issuer pursuant to this paragraph shall be payable within ten days after demand. All L/C Participation Fees and L/C Fronting Fees shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders (in the case of L/C Participation Fees) or the L/C Issuer (in the case of L/C Fronting Fees), so notifies the Borrower (provided that no such notification shall be required, and the following interest shall automatically be payable, in the case of an Event of Default under Sections 8.1(a), (b), (h) or (i)), then, so long as such Event of Default is continuing, L/C Participation Fees and L/C Fronting Fees, as applicable, shall be calculated at a rate per annum equal to the Default Rate.

(c) Other Fees. The Borrower agrees to pay to each Credit Party, for its own account, fees and other amounts payable in the amounts and at the times separately agreed upon between the Borrower and such Credit Party.

(d) Payment of Fees Generally. All fees and other amounts payable hereunder shall be paid on the dates due, in immediately available funds. Fees and other amounts paid shall not be refundable under any circumstances.

Alternate Rate of Interest.(a) Temporary Unavailability of LIBOR Rate. If prior to the commencement of any Interest Period for a LIBOR Borrowing:(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate or the LIBOR Rate, as applicable, for such Interest Period; or

(ii) the Administrative Agent is advised by Required Lenders that the Adjusted LIBOR Rate or the LIBOR Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (x) any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBOR Borrowing shall be ineffective and (y) if any Request for Credit Extension requests a LIBOR Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) Successor LIBOR Rate.

(i) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary, (B) the applicable supervisor or administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be made available or used for determining interest rates for loans (such specific date, the "LIBOR Scheduled Unavailability Date"), or (C) a rate other than the LIBOR Rate has become a widely recognized benchmark interest rate for newly originated loans of this type made in Dollars to borrowers domiciled in the United States, then the Administrative Agent may, in consultation with the Borrower, select an alternate benchmark interest rate (including any credit spread or other adjustments to such alternate benchmark (if any) incorporated therein) to replace the LIBOR Rate for purposes of this Credit Agreement (such rate, the "LIBOR Successor Rate").

(ii) The Administrative Agent and the Borrower shall negotiate in good faith any amendments to this Credit Agreement as may be necessary and appropriate to effectively replace the LIBOR Rate with the LIBOR Successor Rate and incorporate any LIBOR Successor Rate Conforming Changes related thereto. Notwithstanding anything to the contrary in Section 10.2, any such amendment entered into by the Administrative Agent and the Borrower shall become effective without any further action or consent of any other party to this Credit Agreement on the fifth Business Day following the date that a draft of such amendment is provided to the Lenders for review, unless the Administrative Agent receives, on or before noon on such date, a written notice from the Required Class Lenders of each Class stating that such Required Class Lenders object to such amendment.

(iii) If the Administrative Agent determines (which determination shall be conclusive absent manifest error) that the circumstances under Section 3.3(b)(i)(A) have arisen or the LIBOR Scheduled Unavailability Date has occurred, then (A) the Administrative Agent shall promptly notify the Borrower and the Lenders of such determination, which notice may be given by telephone, and (B) until such time as a LIBOR Successor Rate has been selected and this Credit Agreement has been amended to implement such LIBOR Successor Rate and any LIBOR Successor Rate Conforming Changes, (1) the obligation of the Lenders to make or maintain LIBOR Loans shall be suspended, (2) any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBOR Borrowing shall be ineffective, (3) if any Committed Loan Notice requests a LIBOR Borrowing, such Borrowing shall be made as an ABR Borrowing, and (4) the Alternate Base Rate shall be determined without reference to the Adjusted LIBOR Rate component thereof.

(iv) The LIBOR Successor Rate and any LIBOR Successor Rate Conforming Changes shall be determined, applied and implemented in a manner that gives due consideration to the then-prevailing market practice in the United States for determining, applying and implementing benchmark interest rates for newly originated loans of this type made in Dollars to borrowers domiciled in the United States. Notwithstanding anything contained herein to the contrary, for purposes of this Credit Agreement, no LIBOR Successor Rate selected in accordance with the foregoing shall at any time be less than 0.00% per annum.

Increased Costs; Illegality.(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity, 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 (except any reserve requirement reflected in the Adjusted LIBOR Rate) or the L/C Issuer;

(ii) 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; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Credit 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 any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, the L/C Issuer or such other Recipient of participating in, issuing or maintaining any Letter 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 received or receivable by such Lender, the L/C Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, L/C Issuer or other Recipient, the Borrower will pay to such Lender, the L/C Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Applicable Lending Office of such Lender or such Lender's or the L/C Issuer'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 or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Credit Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a

level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Illegality. Notwithstanding any other provision of this Credit Agreement, if, after the Agreement Date, any Change in Law shall make it unlawful for any Lender to make or maintain any LIBOR Loan or to give effect to its obligations as contemplated hereby with respect to any LIBOR Loan, then, by written notice to the Borrower and to the Administrative Agent:

(i) such Lender may declare that LIBOR Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods) and ABR Loans will not thereafter (for such duration) be converted into LIBOR Loans, whereupon any request for a LIBOR Borrowing or to convert an ABR Borrowing to a LIBOR Borrowing or to continue a LIBOR Borrowing, as applicable, for an additional Interest Period shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such for an additional Interest Period or to convert a LIBOR Loan into an ABR Loan, as applicable), unless such declaration shall be subsequently withdrawn; and

(ii) such Lender may require that all outstanding LIBOR Loans made by it be converted to ABR Loans, in which event all such LIBOR Loans shall be automatically converted to ABR Loans, as of the effective date of such notice as provided in the last sentence of this paragraph.

In the event any Lender shall exercise its rights under clause (i) or (ii) of this paragraph, all payments and prepayments of principal that would otherwise have been applied to repay the LIBOR Loans that would have been made by such Lender or the converted LIBOR Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such LIBOR Loans, as applicable. For purposes of this paragraph, a notice to the Borrower by any Lender shall be effective as to each LIBOR Loan made by such Lender, if lawful, on the last day of the Interest Period currently applicable to such LIBOR Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

Break Funding Payments. In the event of (a) the payment or prepayment of any principal of any LIBOR Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration (including as a result of a bankruptcy filing, or otherwise), (b) the conversion of any LIBOR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any LIBOR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.7(a) and is revoked in accordance therewith), or (d) the assignment of any LIBOR Loan other than on the last day of the Interest Period or maturity date applicable thereto as a result of a request by the Borrower pursuant to Section 3.7(b), then, in any such event, the Borrower shall compensate each applicable Lender for the loss, cost and expense attributable to such event. In the case of a LIBOR Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurocurrency market. 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 days after receipt thereof.

Taxes. (a) Defined Terms. For purposes of this Section 3.6, the term "Lender" includes the L/C Issuer and the term "applicable law" includes FATCA.

(b) 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 law. 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) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. Each of the Loan Parties shall 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.

(d) Indemnification by the Loan Parties. Each of the Loan Parties shall jointly and severally indemnify each Recipient, within ten 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) 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, 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. Each of the Loan Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.6(e)(ii).

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten 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 10.4(d) 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 paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.6, such Loan Party shall 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.

(g) 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 Section 3.6(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if 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,

(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 Credit 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 Credit 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 (A) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (B) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, 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, (A) a certificate substantially in the form of Exhibit G-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 (B) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; 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, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-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 Credit 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 Credit Agreement.

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.

(h) 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 3.6 (including by the payment of additional amounts pursuant to this Section 3.6), 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 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 paragraph (h) (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 paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) 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.

(i) Survival. Each party's obligations under this Section 3.6 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the Termination Date.

(j) Confidentiality. Nothing contained in this Section shall require any Credit Party or any other indemnified party to make available any of its Tax returns (or any other information that it deems to be confidential or proprietary) to the indemnifying party or any other Person.

Mitigation Obligations; Replacement of Lenders.(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.4, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.6, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different Applicable Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.4 or Section 3.6, 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. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.4 or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.6 and, in each case, such Lender has declined or is unable to designate a different Applicable Lending Office in accordance with Section 3.7(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.4), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.4 or Section 3.6) and obligations under this Credit Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) unless waived by the Administrative Agent in its sole discretion, the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.4;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the

other Loan Documents (including any amounts under Section 3.5) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.4 or payments required to be made pursuant to Section 3.6, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented (or is willing to consent upon becoming a Lender) to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### ARTICLE 4

##### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Conditions to Initial Credit Extensions. The effectiveness of this Credit Agreement and the obligation of each Lender and the L/C Issuer to make its initial Credit Extension hereunder on the Closing Date is subject to satisfaction or waiver of the following conditions precedent (provided that the delivery of any document or the performance of any obligation required to be delivered or performed under Section 6.14 shall not be a condition precedent to the initial Credit Extension on the Closing Date):

(a) Credit Agreement. The Administrative Agent (or its counsel) shall have received a counterpart of this Credit Agreement (which may include facsimile transmission or electronic mail transmission of a signed signature page of this Credit Agreement) that, when taken together, bear the signatures of the Borrower and each Lender.

(b) Notes. The Administrative Agent shall have received a Note for each Lender that shall have requested one, signed on behalf of the Borrower.

(c) Legal Opinion. The Administrative Agent shall have received a favorable written opinion (addressed to the Credit Parties and dated the Closing Date) from Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, special counsel to the Loan Parties, in form, scope and substance satisfactory to the Administrative Agent. The Borrower hereby requests such counsel to deliver such opinions.

(d) Officers' Closing Certificate. The Administrative Agent shall have received a certificate of the President or a Vice President and the Secretary or Assistant Secretary of each Loan Party, dated the Closing Date, substantially in the form of Exhibit E.

(e) Fees and Expenses. Substantially contemporaneously with the making of the Loans to be made on the Closing Date, the Borrower shall have paid all fees and expenses that under the terms hereof or of the Engagement Letter are due and payable on or prior to the Closing Date, as well as the reasonable fees, disbursements and other charges of counsel to the Administrative Agent and the Lead Arranger in connection with the Transactions to the extent invoiced on or prior to the Closing Date.

(f) Collateral and Guarantee Requirement.(i) The Collateral Documents set forth in Schedule 4.1(f) shall have been duly executed and/or delivered by each Loan Party that is to be a party thereto and shall be in full force and effect. The Administrative Agent on behalf of the Secured Parties shall have a security interest in the Collateral of the type and the priority described in each such Collateral Document; and

(ii) The Administrative Agent shall have received control agreements for all deposit accounts and securities accounts (other than Excluded Accounts), in each case in form and substance reasonably satisfactory to the Administrative Agent and duly executed by the applicable Loan Party party thereto and the relevant depository or intermediary.

(g) [Reserved].

(h) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate attesting to the Solvency of each Loan Party and its Subsidiaries (taken as a whole) on the Closing Date immediately before and after giving effect to the Transactions, from the chief financial officer or an authorized person performing similar function of the Borrower.

(i) Committed Loan Notice; Letter of Credit Application. The Administrative Agent shall have received a completed Committed Loan Notice and/or Letter of Credit Application, duly executed by a Responsible Officer of the Borrower with respect to any Credit Extensions to be made on the Closing Date.

(j) Insurance. The Administrative Agent shall have received evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect and that the Administrative Agent has been named as lender's loss payee and/or additional insured, as applicable, under each insurance policy with respect thereto, in each case, in accordance with the terms of the Loan Documents, and the Administrative Agent is otherwise satisfied with all of the insurance arrangements of the Loan Parties and their Subsidiaries.

(k) Pro-Forma Compliance Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower, setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenants on a Pro Forma Basis immediately after giving effect to the Transactions occurring on the Closing Date.

(l) USA PATRIOT Act; KYC. The Lenders shall have received, no later than two (2) Business Days prior to the Closing Date, (i) all documentation and other information requested by them and required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) with respect to any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to such Borrower.

(m) Financial Statements. The Administrative Agent shall have received (i) the Audited Financial Statements and (ii) the Unaudited Financial Statements. Availability of the Audited Financial Statements and the Unaudited Financial Statements on EDGAR Online or the Borrower’s website on the Internet at the website address listed in Section 10.1 (to the extent such report complies with the requirements of the applicable definitions), shall be deemed to be compliance by the Borrower with this Section 4.1(m).

(n) Legal Impediments. No law or regulation shall be applicable that restrains, prevents or imposes materially adverse conditions upon the Credit Facilities.

(o) No Material Adverse Effect. Since December 31, 2018, there shall not have occurred a Material Adverse Effect or any event or circumstance that would reasonably be expected to result in a Material Adverse Effect.

(p) Financial Officer Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower confirming that the conditions set forth in paragraph (o) of this Section 4.1 and clauses (a) and (b) of Section 4.2 shall be satisfied.

For purposes of determining whether the Closing Date has occurred, each Lender that has executed this Credit Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless such Lender has notified the Administrative Agent of any disagreement prior to the initial Credit Extensions hereunder.

Conditions to All Credit Extensions. The obligation of each Lender or the L/C Issuer, as the case may be, to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of LIBOR Loans) is subject to the satisfaction of the conditions in Section 4.1 and the following additional conditions precedent:

(a) Each of the representations and warranties of the Loan Parties set forth in the Loan Documents 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, provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided further that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Borrowing under an Incremental Facility, each of the applicable requirements set forth in Section 2.11 shall have been satisfied.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of LIBOR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the applicable conditions specified in Sections 4.2(a) and, if applicable, (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as now conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, and (d) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c) or (d), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Borrower and its Subsidiaries are in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and maintains all permits and licenses necessary to conduct its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party, and the consummation of the Transactions, are within such Loan Party’s corporate, limited liability company or other analogous powers, have been duly authorized by all necessary corporate, limited liability company or other analogous action, and do not and will not (a) contravene the terms of any of such Person’s Organizational Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than under the Loan Documents), or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or

(ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i), to the extent that such conflict, breach, contravention or payment could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of any Loan Document to which it is a party, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Loan Documents, except for (i) filings and recordings necessary to satisfy the Collateral and Guarantee Requirement, and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect.

Binding Effect. Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto and constitutes a legal, valid and binding obligation of each such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Financial Statements; No Material Adverse Effect.(a) The Audited Financial Statements and Unaudited Financial Statements:

(i) fairly present the financial condition of the Borrower and its Subsidiaries, as applicable, as of the dates thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, subject, in the case of the Unaudited Financial Statements, to normal year-end audit adjustments and the absence of footnotes; and

(ii) show all material Indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries, as applicable, as of the date thereof, including liabilities for Taxes, material commitments and contingent obligations.

(b) Since December 31, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to result in a Material Adverse Effect.

Litigation. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against any Loan Party or, to the knowledge of the Borrower, threatened against or affecting the Loan Parties or any of their Subsidiaries (a) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (b) that involve or affect, or that purport to or could reasonably be expected to involve or affect, any Loan Document or the Transactions.

Environmental Matters.(a) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect:

(i) each Loan Party and its Subsidiaries possess all Environmental Permits required under applicable Environmental Law to conduct their respective businesses and are, and within applicable statutes of limitation, have been, in compliance with the terms of such Environmental Permits. No Loan Party or any of its Subsidiaries has received written notice that any Environmental Permits possessed by any of them will be revoked, suspended or will not be renewed;

(ii) the execution and delivery of this Credit Agreement and the consummation by the Loan Parties of the Transactions does not require any notification, registration, reporting, filing, investigation, or environmental response action under any Environmental Law;

(iii) each of the Loan Parties and their Subsidiaries are currently, and within applicable statutes of limitation, have been, in compliance with all applicable Environmental Law;

(iv) no Loan Party nor any of its Subsidiaries has received (A) notice of any pending or threatened civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, notice or demand letter or request for information under any Environmental Law, or (B) notice of actual or potential liability under any Environmental Law including any Environmental Liability that such Loan Party or Subsidiary may have retained or assumed either contractually or by operation of law or of any Environmental Claim, in either case with respect to clauses (A) or (B) that reasonably could be expected to result in material expenditure by such Loan Party or Subsidiary. No Loan Party or any of its Subsidiaries has knowledge of any circumstances that reasonably could be expected to result in an Environmental Liability;

(v) as of the Agreement Date: (A) no property or facility currently, or to the knowledge of each Loan Party, formerly owned, operated or leased by any Loan Party or any of its current or former Subsidiaries or by any respective predecessor in interest, and (B) no property at which Hazardous Materials generated, owned or controlled by any Loan Party, any of its present or former Subsidiaries or any predecessor in interest have been stored, treated or disposed of, have been identified by a Governmental Authority as recommended for or requiring or potentially requiring environmental assessment and/or response actions under Environmental Law;

(vi) (A) there has been no disposal, spill, discharge or Release of any Hazardous Material generated, used, owned, stored or controlled by any Loan Party, any of its Subsidiaries or any predecessor in interest, on, at or under any property currently or formerly owned, leased or operated by any Loan Party, any of its current or former Subsidiaries or any predecessor in interest, (B) there are no Hazardous Materials located in, at, on or under such facility or property, or at any other location, in either case (A) or (B), that reasonably could be expected to require investigation, removal, remedial or corrective measures by any Loan Party or any of its Subsidiaries or that reasonably could result in liabilities of, or losses, damages or costs to any Loan Party or any of its Subsidiaries

under any Environmental Law, and (C) neither the Loan Parties nor any of their Subsidiaries has retained or assumed any liability contractually or by operation of law with regard to the generation, treatment, storage or disposal of Hazardous Materials or compliance with Environmental Law that could reasonably be expected to result in material expenditures by any Loan Party or any of its Subsidiaries;

(vii) (A) there has not been any underground or aboveground storage tank or other underground storage receptacle or related piping, or any impoundment or other disposal area in each case containing Hazardous Materials located on any facility or property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries, and (B) no asbestos or polychlorinated biphenyls have been used or disposed of, or have been located at, on or under any facility or property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries, in either case (A) or (B) except in compliance with applicable Environmental Laws or as would not result in Environmental Liability;

(viii) no Lien has been recorded against any properties, assets or facilities currently owned, leased or operated by any Loan Party or any of its Subsidiaries under any Environmental Law.

(b) The Loan Parties and their Subsidiaries have provided to the Administrative Agent and its authorized representatives all material records and files, including all material assessments, reports, studies, analyses, audits, tests and data in their possession or under their control concerning any Environmental Claim, the existence of Hazardous Materials or any other environmental concern at properties, assets or facilities currently or formerly owned, operated or leased by any Loan Party or any of their present or former Subsidiaries or predecessor in interest, or concerning compliance by any Loan Party or any such Subsidiary with, or liability under any Environmental Law.

Ownership of Properties; Liens. Each Loan Party and its Subsidiaries (a) has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes, (b) owns, or is entitled to use, all trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, technology, software, know-how database rights, design rights and other intellectual property rights material to its business, and the use thereof by the Loan Parties and their respective Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (c) has complied in all material respects with all obligations under all material leases to which it is a party and all such leases are in full force and effect and (d) enjoys peaceful and undisturbed possession under all such material leases.

Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Investment Company Status, Etc. No Loan Party or any of its Subsidiaries is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt.

Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all federal, provincial, state, municipal, foreign and other Tax returns and reports required to be filed, and have timely paid all federal, provincial, state, municipal, foreign and Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being Contested in Good Faith and (b) failures to file or pay as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. There are no Tax audits, deficiencies, assessments or other claims with respect to any Loan Party or any of its Subsidiaries that could, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

ERISA.(a) Each Loan Party and each of its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. No event described in Section 4062(e) of ERISA has occurred and is continuing with respect to any Pension Plan. The present value of all accumulated benefit obligations under each Pension Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Pension Plan and the present value of all accumulated benefit obligations of all underfunded Pension Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Pension Plans.

(b) Each Pension Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Loan Parties, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Loan Party and ERISA Affiliate has made all required contributions to each Pension Plan subject to Section 412 of the Code, and no application for a funding waiver pursuant to Section 412 of the Code has been made with respect to any Pension Plan.

(c) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan that would reasonably be expected to result in a Material Adverse Effect. There has been no violation of the fiduciary responsibility rules of ERISA with respect to any Pension Plan that has resulted in or would reasonably be expected to result in a Material Adverse Effect.

(d) No Loan Party or ERISA Affiliate (i) has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (ii) has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such

liability) under Section 4201 of ERISA with respect to a Multiemployer Plan, and (iii) has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

(e) No such Pension Plan or trust created thereunder, or party in interest (as defined in Section 3(14) of ERISA), or any fiduciary (as defined in Section 3(21) of ERISA), has engaged in a “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) which would subject such Pension Plan or any other plan of any Loan Party or any of its ERISA Affiliates, any trust created thereunder, or any such party in interest or fiduciary, or any party dealing with any such Pension Plan or any such trust, to any material penalty or tax on “prohibited transactions” imposed by Section 502 of ERISA or Section 4975 of the Code.

(f) With respect to any Foreign Plan, (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

Subsidiaries; Equity Interests. As of the Agreement Date, no Loan Party has any direct or indirect Subsidiaries or investments (other than Cash Equivalents) in, or joint ventures or partnerships with, any Person, except as disclosed in Schedule 5.13. Such Schedule sets forth (a) the name and jurisdiction of organization or incorporation of each Subsidiary and identifies each Subsidiary that is an Excluded Subsidiary and/or Subsidiary Guarantor on the Agreement Date, (b) the ownership interest of each Loan Party and tier respective Subsidiaries in each of their respective Subsidiaries, including the percentage of such ownership and (c) identifies each Person the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement. Neither any Loan Party nor any of its Subsidiaries has issued any Disqualified Equity Interests and there are no outstanding options or warrants to purchase Equity Interests of any Loan Party or any of its Subsidiaries of any class or kind, and there are no agreements, voting trusts or understandings with respect thereto or affecting in any manner the sale, pledge, assignment or other disposition thereof, including any right of first refusal, option, redemption, call or other rights with respect thereto, whether similar or dissimilar to any of the foregoing. All of the issued and outstanding Equity Interests owned by any Loan Party in its Subsidiaries have been duly authorized and issued and are fully paid and non-assessable and are free and clear of all Liens other than Liens in favor of the Administrative Agent under the Collateral Documents.

Insurance. Schedule 5.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries on the Agreement Date (including names of carriers, policy number, expiration dates, insurance types and coverage amounts). As of the Agreement Date, all premiums in respect of such insurance that are due and payable have been paid.

Federal Reserve Regulations, Etc. Neither any Loan Party nor any of its Subsidiaries is engaged principally, or as one of their important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. Immediately before and after giving effect to the making of each Loan and the issuance of each Letter of Credit, Margin Stock will constitute less than 25% of each Loan Party’s assets as determined in accordance with Regulation U. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase, acquire or carry any Margin Stock or for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X or (b) for any purpose that would violate any Anti-Corruption Laws or applicable Sanctions.

Collateral Documents. The Security Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Security Agreement) and the proceeds thereof and (a) when the Pledged Equity Interests (other than uncertificated Equity Interests) and the Pledged Debt Securities (as each such term is defined in the Security Agreement) are delivered to the Administrative Agent together with the proper endorsements, the Lien created under Security Agreement shall constitute a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Loan Parties in such Pledged Equity Interests and Pledged Debt Securities to the extent that the laws of the United States or any state, commonwealth or other political subdivision thereof govern the creation and perfection of any such security interest, in each case prior and superior in right to any other Lien or right of any other person and (b) when financing statements in appropriate form are filed in the offices specified on Schedule 5.16(a) and, with respect to Collateral consisting of Intellectual Property, when the Security Agreement (or Copyright Security Agreements, Patent Security Agreements and/or Trademark Security Agreements, as applicable) are filed with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and in each case, all applicable filing fees have been paid, the Lien created under the Security Agreement will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Collateral to the extent such security interest may be perfected by the filing of a UCC financing statement and, with respect to Intellectual Property, the filing of such Copyright Security Agreements, Patent Security Agreements and/or Trademark Security Agreements with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Lien or right of any other person, other than Liens expressly permitted by Section 7.2 which by operation of law or contract have priority over the Liens securing the Secured Obligations.

Solvency. Immediately before and after the consummation of each Transaction, each of the Loan Parties and its Subsidiaries, on a consolidated basis, are Solvent.

Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws.

(a) Each Loan Party, its Subsidiaries and their respective officers and employees and their directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions. Neither any Loan Party, any of its Subsidiaries or any of their respective directors, officers or employees is a Sanctioned Person. Each Loan Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and all applicable Sanctions.

(b) No Loan or Letter of Credit, use of the proceeds of any Loan or Letter of Credit or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions. No part of the proceeds of the Loans or the Letters or Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Anti-Corruption Laws.

(c) Neither the making of the Loans hereunder nor the use of the proceeds thereof will violate the any regulations passed under the USA PATRIOT Act or will violate the Trading with the Enemy Act, the International Emergency Economic Powers Act, or any regulations passed thereunder, including the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto or successor statute thereto (together with Sanctions, "Anti-Terrorism Laws"). Each Loan Party and each of its Subsidiaries are in compliance with applicable Anti-Terrorism Laws.

#### Section 5.19 Accuracy of Information, Etc.

(a) Each Loan Party has disclosed to the Credit Parties all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. No reports, financial statements, certificates or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to any Credit Party in connection with the transactions contemplated hereby and the negotiation of this Credit Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Labor Matters. There are no strikes, lockouts or slowdowns against any Loan Party or any of its Subsidiaries pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All material payments due from the Loan Parties or any of their Subsidiaries, or for which any claim may be made against any of the Loan Parties or any of their Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any of the Loan Parties or any of their Subsidiaries is bound.

Absence of Certain Restrictions. No indenture, certificate of designation for preferred stock, agreement or instrument to which any Loan Party or any of its Subsidiaries is a party (other than this Credit Agreement), prohibits or limits in any way, directly or indirectly the ability of any Subsidiary to make Restricted Payments or loans to, to make any advance on behalf of, or to repay any Indebtedness to, any Loan Party or to another Subsidiary.

No Default. No Loan Party nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound in any respect that would reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Credit Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

Brokers' Fees. None of the Loan Parties or their Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Loan Documents other than the closing and other fees payable pursuant to this Credit Agreement and as set forth in the Engagement Letter.

EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

## ARTICLE 6

### AFFIRMATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Credit Parties that:

Financial Statements and Other Information. The Borrower will furnish or caused to be furnished to the Administrative Agent and each Lender either in hard copy or by electronic communication (including by email, internet and intranet websites) pursuant to procedures approved by the Administrative Agent:

(a) within 90 days after the end of each fiscal year, the Borrower's annual report on Form 10-K containing the audited consolidated balance sheet of the Borrower and its Subsidiaries together with the related statements of income, comprehensive income,

stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or another registered independent public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied; provided, that delivery by the Borrower to the Administrative Agent of the Borrower's annual report on Form 10-K to the SEC with respect to any fiscal year, or the availability of such report on EDGAR Online or the Borrower's website on the Internet at the website address listed in Section 10.1 (to the extent such report complies with the requirements of this clause (a)), within the period specified above shall be deemed to be compliance by the Borrower with this Section 6.1(a);

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries and the related unaudited statements of income, comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; provided, that delivery by the Borrower to the Administrative Agent of the Borrower's quarterly report on Form 10-Q to the SEC with respect to any fiscal quarter, or the availability of such report on EDGAR Online or the Borrower's website on the Internet at the website address listed in Section 10.1 (to the extent such report complies with the requirements of this clause (b)), within the period specified above shall be deemed to be compliance by the Borrower with this Section 6.1(b);

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate signed by a Financial Officer of the Borrower (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the Audited Financial Statements and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate, (ii) containing either a certification that no Default exists or, specifying the nature of each such Default, the nature and status thereof and any action taken or proposed to be taken with respect thereto, (iii) certifying that there have been no changes to the jurisdiction of organization or legal name of any Loan Party since the date of the last Compliance Certificate delivered pursuant to this Agreement, (iv) attaching reasonably detailed calculations demonstrating compliance with Section 7.12, and (v) certifying that the Borrower has no Subsidiaries other than (A) those that existed on the Closing Date and were reflected in the Perfection Certificate on such date, (B) those formed or acquired after the Closing Date with respect to which the Administrative Agent was previously notified either pursuant to Section 6.12 of this Agreement, in an additional Perfection Certificate or in a previous Compliance Certificate, and (C) those other Subsidiaries set forth on the relevant Schedule to such Compliance Certificate, which Schedule sets forth for each such Subsidiary whether such Subsidiary is (w) a Domestic Subsidiary, (x) a Subsidiary Guarantor (including the basis for it not being a Subsidiary Guarantor, if applicable), (y) a first tier Foreign Subsidiary or (z) an Excluded Subsidiary (including the basis for its constituting an Excluded Subsidiary).

(d) (i) within 60 days after the beginning of each fiscal year (commencing with the fiscal year beginning January 1, 2020), an annual consolidated forecast for the Borrower and its Subsidiaries for such fiscal year, including projected consolidated statements of income and comprehensive income of the Borrower and its Subsidiaries, all in reasonable detail acceptable to the Administrative Agent; (ii) such other forecasts that the Borrower or any Subsidiary may prepare and deliver to the Borrower's Board of Directors (and for the avoidance of doubt, only in the event such forecasts are delivered), and any revisions that may be made to any forecast previously delivered to the Administrative Agent and the Lenders; and (iii) no later than 30 days after the end of each fiscal quarter in which there has been a material deviation from a forecast provided to the Administrative Agent and the Lenders, a certificate of a Financial Officer of the Borrower explaining the deviation and the action, if any, that has been taken or is proposed to be taken with respect thereto; in each case the foregoing forecasts shall state all underlying assumptions;

(e) concurrently with the delivery of any Compliance Certificate under clause (c) above, a discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for the portion of the Fiscal Year then elapsed, including a discussion of the reasons for any significant variations from the figures for the corresponding period of the previous Fiscal Year;

(f) for each acquisition for which the value of the total consideration paid by the Borrower or any Subsidiary (whether in cash or otherwise) is greater than or equal to \$5,000,000, within five (5) Business Days following the consummation of such acquisition, (1) a notice of such acquisition, which notice shall set forth evidence of Pro Forma Compliance with all the financial covenants under the Loan Documents, and (1) true and complete copies of each acquisition document together with all schedules thereto, each executed by all of the parties thereto; and

(g) promptly following any request therefor, (i) such other information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the USA Patriot Act, the Beneficial Ownership Regulation or other applicable Anti-Corruption and Anti-Terrorism Laws (including those passed pursuant to the USA PATRIOT Act), and (ii) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as any Credit Party may reasonably request.

Notices of Material Events. The Borrower will furnish or caused to be furnished to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default, specifying the nature and extent thereof;

(b) the filing or commencement of, or any threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against, or affecting, any Loan Party or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect;



(c) if requested by Administrative Agent from time to time, copies of any annual report required to be filed in connection with each Pension Plan or Foreign Plan, and as soon as possible after, and in any event within ten days after any Loan Party or any ERISA Affiliate knows or has reason to know that, any ERISA Event (or any similar event with respect to a Foreign Plan) has occurred that, alone or together with any other ERISA Event (or any similar event with respect to a Foreign Plan) would reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate in an aggregate amount exceeding the Threshold Amount;

(d) as soon as possible and in no event later than five (5) Business Days after the receipt by any Loan Party or any of its Subsidiaries, of a copy of any notice, summons, citation or other written communication concerning any actual, alleged, suspected or threatened violation of any Environmental Law by, Environmental Claim against or Environmental Liability of, any Loan Party or any of its Subsidiaries, in each case, which would reasonably be expected to result in a Material Adverse Effect;

(e) to the extent applicable, promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any of its Subsidiaries with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by any Loan Party to its shareholders generally, as the case may be;

(f) to the extent applicable, promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.2;

(g) promptly after any Loan Party or any of its Subsidiaries (i) being required to file reports under Section 15(d) of the Securities Exchange Act of 1934, or (ii) registering securities under Section 12 of the Securities Exchange Act of 1934;

(h) in the event that any Person shall become, or cease to be, a Subsidiary or a Guarantor, the Borrower shall promptly furnish to the Administrative Agent an updated list of Subsidiaries or Guarantors, as the case may be;

(i) the occurrence of any other development that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect; and

(k) promptly, but in any event within five (5) Business Days, any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer of the Borrower or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.3 or any sale, lease, transfer or other disposition permitted by Section 7.5.

Payment and Performance of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay or perform its obligations, including Tax liabilities, that, if not paid or performed, would reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being Contested in Good Faith and (b) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect, provided that nothing in this Section shall be deemed to require any Loan Party to pay any Subordinated Debt in violation of the subordination provisions applicable thereto.

Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by any Credit Party, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accounting firm, all at the expense of the Borrower and at such reasonable times and as often as reasonably requested; provided, however, during the existence of an Event of Default, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and maintain all permits and licenses necessary to conduct its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. In addition, and without limiting the foregoing sentence, each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Environmental Laws in all material respects, and with Anti-Corruption Laws, applicable Sanctions and the USA PATRIOT Act and the regulations promulgated thereunder in all respects.

Use of Proceeds.(a) The proceeds of the Loans and the Letters of Credit will be used only for working capital and other general corporate purposes not inconsistent with the terms hereof or in contravention of any law or any Loan Document. The Revolving Facility will be undrawn on the Closing Date.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase, acquire or carry any Margin Stock or (ii) for any purpose that entails a violation of any of the regulations of the Board, including Regulations T, U and X. The Borrower will not request any Credit Extension, and the Borrower

shall not use, and shall ensure that each Loan Party, their respective Subsidiaries and their respective directors, officers, employees and agents shall not use, the proceeds of any Credit Extension (x) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (y) in any manner that would result in the violation of any applicable Sanctions or any Anti-Terrorism Laws by any Person, including any Credit Party.

**Information Concerning Collateral.** The Borrower will furnish to the Administrative Agent at least ten (10) days prior written notice of any change in (a) the legal name or jurisdiction of incorporation or formation of any Loan Party, (b) the location of the chief executive office of any Loan Party or its principal place of business, (c) the identity or organizational structure of any Loan Party such that a filed financing statement becomes misleading or (d) the Federal Taxpayer Identification Number or company organizational number of any Loan Party. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

**Insurance.**(a) The Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, adequate insurance for its insurable properties, all to such extent and against such risks, including fire, casualty, business interruption and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations and of same or similar size, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it (including the insurance required pursuant to the Collateral Documents); and maintain such other insurance as may be required by law.

(b) With respect to any portion of any Mortgaged Property that is located in a Flood Zone within a community participating in the Flood Program, the Borrower will, and will cause any applicable Loan Party to, maintain through the Flood Program or through private insurance policies, with financially sound and reputable insurance companies (except to the extent that any insurance company insuring the Mortgaged Property of the Borrower and each other Loan Party ceases to be financially sound and reputable after the Closing Date, in which case, the Borrower shall promptly replace such insurance company with a financially sound and reputable insurance company), (A) such flood insurance coverage under policies issued pursuant to and in compliance with the Flood Insurance Laws ("Flood Insurance Policies") in an amount equal to the maximum limit of coverage available for such Mortgaged Property under Flood Insurance Laws, subject only to deductibles consistent in scope and amount with those permitted under the Flood Program and (B) such additional coverage as required by Administrative Agent, if any, under supplemental private insurance policies in an amount so required by the Administrative Agent.

(c) The Borrower will, and will cause each of its Subsidiaries to, (i) cause all such policies of such Loan Party and its Subsidiaries to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent, which endorsement or amendment shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Administrative Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to such Loan Party under such policies directly to the Administrative Agent, (ii) cause all such policies to provide that neither such Loan Party, any Subsidiary or the Administrative Agent nor any other party shall be a co-insurer thereunder and to contain a "Replacement Cost Endorsement," without any deduction for depreciation, and such other provisions as the Administrative Agent may reasonably require from time to time to protect its interests, (iii) deliver original or certified copies of all such policies to the Administrative Agent, (iv) cause each such policy to provide that it shall not be canceled, modified or not renewed for any other reason upon not less than 30 days' (or in the case of Flood Insurance Policies issued by private insurance companies, 45 days') prior written notice thereof by the insurer to the Administrative Agent, (v) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent) together with evidence satisfactory to the Administrative Agent of payment of the premium therefor.

(d) The Borrower will promptly upon request of the Administrative Agent or any other Lender, deliver to the Administrative Agent (for distribution to all Lenders), evidence of compliance by all Loan Parties with the requirements contained Sections 6.10(a) through (c) in form and substance reasonably acceptable to the Administrative Agent and the Lenders, including, without limitation, evidence of annual renewals of such insurance.

(e) The Borrower will, and will cause each of its Subsidiaries to, notify the Administrative Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 6.10 is taken out by any Loan Party; and promptly deliver to the Administrative Agent a duplicate original copy of such policy or policies.

(f) In connection with the covenants set forth in this Section 6.10, it is understood and agreed that:

(i) no Credit Party or any of its Related Parties shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.10, it being understood that (A) each Loan Party shall look solely to its insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against any Credit Party or any of their Related Parties, provided, however, that if the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Borrower (for itself and each of its Subsidiaries) hereby agrees, to the extent permitted by law, to waive its right of recovery, if any, against the Credit Parties and their Related Parties; and

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent or the Required Lenders under this Section 6.10 shall in no event be deemed a representation, warranty or advice by any Credit Party that such insurance is adequate for the purposes of the business of any Loan Party or its Subsidiaries or the protection of their properties and the Administrative Agent and the Required Lenders shall have the right from time to time to require the Loan Parties and their respective Subsidiaries to keep other insurance in such form and amount as the Administrative Agent or the Required Lenders may reasonably request; provided that such insurance shall be obtainable on commercially reasonable terms.

Covenant to Guarantee and Provide Security.(a) Subsidiary Guarantors. If any Domestic Subsidiary of a Loan Party (other than an Excluded Subsidiary or a Subsidiary that is a party to this Credit Agreement and the Collateral Documents) or a Foreign Subsidiary of a Loan Party (unless causing such Foreign Subsidiary to be subject to the requirements in this clause (a) would reasonably be expected to result in material adverse tax consequences to the Borrower and its Subsidiaries) is formed or acquired after the Agreement Date or if an Excluded Subsidiary ceases to be an Excluded Subsidiary, the Borrower will notify the Credit Parties in writing thereof within ten (10) Business Days following the date on which such Subsidiary is formed or acquired or such Excluded Subsidiary ceases to be an Excluded Subsidiary (or such later date as may be acceptable to the Administrative Agent in its sole discretion) and, by such date:

(i) the Borrower will cause each such Subsidiary to (A) execute and deliver a Subsidiary Joinder Agreement (and, if applicable, the Guarantee Agreement) and a Perfection Certificate and (B) promptly take such actions to comply with the Collateral and Guarantee Requirements and create and perfect Liens on such Subsidiary's assets to secure the Secured Obligations as the Administrative Agent shall reasonably request (including the execution and delivery of any collateral document necessary or appropriate to create and perfect Liens with respect to such Subsidiary's owned or leased real property or any Collateral Access Agreement or similar document) (it being understood that not more than 100% of the non-voting Equity Interests (if any) and 65% of the voting Equity Interests in each First Tier Foreign Subsidiary that is a Controlled Foreign Corporation shall be pledged to the extent a pledge of a greater percentage would reasonably be expected to result in a material adverse tax consequence to the Borrower and its Subsidiaries),

(ii) if any Equity Interests issued by any such Subsidiary are owned or held by or on behalf of any Loan Party, the Borrower will cause such Equity Interests to be pledged pursuant to the Collateral Documents not later than the tenth Business Day after the date on which such Subsidiary is formed or acquired, and

(iii) the Borrower will deliver or cause to be delivered to the Administrative Agent such certificates and legal opinions as would have been required had such Subsidiary been a Subsidiary Guarantor on the Closing Date.

(b) Real Property.

(i) Upon the acquisition by any Loan Party after Closing Date of any Material Owned Real Property or if any Real Property becomes Material Owned Real Property, the Borrower shall immediately notify the Administrative Agent, setting forth with specificity a description of such Material Owned Real Property, including the location thereof, any structures or improvements thereon and, as determined by the Administrative Agent in its sole discretion, either an appraisal or Borrower's good faith estimate of the current value of such Material Owned Real Property. Within 45 days of the delivery of such notice and unless the Administrative Agent in its sole discretion determines not to require a Mortgage on such Material Owned Real Property:

(A) the Loan Party that owns such Material Owned Real Property shall have satisfied the Mortgage Requirement, and

(B) the Borrower shall, or shall cause such Loan Party to, pay all fees and expenses, including Attorney Costs, and all title insurances charges and premiums, in connection with each Loan Party's obligations under this Section.

(ii) Notwithstanding the foregoing, the Administrative Agent shall not enter into any Mortgage in respect of any improved real property acquired by any Loan Party after the Closing Date or to be mortgaged in connection with a MIRE Event unless the Administrative Agent has provided to the Lenders:

(A) if such Mortgage relates to an improved real property not located in a Flood Zone, a completed Flood Certificate from a third party vendor at least ten (10) days prior to entering into such Mortgage; or

(B) if such Mortgage relates to an improved real property located in a Flood Zone, the following documents with respect to such improved real property at least thirty (30) days prior to entering into such Mortgage: (i) a Flood Certificate a third party vendor; (ii) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available, (iii) evidence of the receipt by the applicable Loan Parties of such notice; and (iv) if required by the Flood Program, evidence of required flood insurance;

provided that the Administrative Agent may enter into any such Mortgage prior to the end of any notice period set forth above if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

As of the Closing Date, the Loan Parties do not own any Real Property that would constitute Material Owned Real Property.

(c) Further Assurances.(i) The Borrower will, and will cause each of the Loan Parties to, grant to the Administrative Agent, for the benefit of the Secured Parties, security interests in such of its assets and properties as are not covered by the Collateral Documents in order that the Borrower be in compliance with the Collateral and Guarantee Requirement. Such security interests shall (i) be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (ii) constitute valid and enforceable perfected security interests superior to and prior to the rights of all third Persons, and subject to no other Liens, except Liens permitted by Section 7.2. Such additional collateral documents and the other instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Administrative Agent required to be granted pursuant to such additional collateral documents and all taxes, fees and other charges payable in connection therewith shall have been paid in full.

(ii) The Borrower will, and will cause each of the Loan Parties to, at its own expense, make, execute, endorse, acknowledge, file or deliver to the Administrative Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, surveys, reports and other

assurances or instruments, and take such further steps relating to the Collateral covered by any of the Collateral Documents as the Administrative Agent may reasonably require. The Borrower shall cause to be delivered to the Administrative Agent such opinions of counsel and other related documents as may be reasonably requested by the Administrative Agent.

(iii) Each action required by this Section 6.12(b) shall be completed as soon as possible, but in no event later than 30 days (or such longer period in the case of actions involving third parties as determined by the Administrative Agent in its reasonable discretion) after any such assets or properties are acquired or such action is requested to be taken by the Administrative Agent, as the case may be.

Environmental Matters. The Borrower will, and will cause each of its Subsidiaries to, (a) conduct its operations in material compliance with all applicable Environmental Laws, (b) implement any and all investigation, remediation, removal and response actions that either are necessary to materially comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Material on, at, under, or from any of their owned or leased property or are requested by Government Authorities pursuant to Environmental Law, (c) notify the Administrative Agent promptly upon becoming aware of any violation of Environmental Laws or any Release of Hazardous Materials on, at, under, or from, any property that is reasonably likely to result in an Environmental Claim against any Loan Party or any of its Subsidiaries in excess of the Threshold Amount in the aggregate and promptly forward to the Administrative Agent a copy of any written communication received in connection therewith. If the Administrative Agent at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws or a Release of Hazardous Materials on, at, under, or from any property owned or leased by any Loan Party or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect, then, subject to Section 9.3(d), upon request by the Administrative Agent the Borrower shall cause such Loan Party to permit the Administrative Agent to appoint a nationally-recognized independent environmental testing firm or such other consultant as the Administrative Agent shall determine, at the Loan Parties' expense, to have access to all property owned or leased by each Loan Party and each of its Subsidiaries for the purpose of conducting such environmental testing, including subsurface sampling of soil and groundwater, as the Administrative Agent deems appropriate to investigate the subject of the potential violation or Release.

#### Section 6.14 Post-Closing Covenant.

(a) Within thirty (30) days following the Closing Date (or such longer time as agreed to by the Administrative Agent in its sole discretion), the Administrative Agent shall have received in form and substance reasonably satisfactory to the Administrative Agent endorsements to the Loan Parties' insurance policies showing the Administrative Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming the Administrative Agent as additional insured with respect to each policy of liability insurance.

(b) Within thirty (30) days following the Closing Date (or such longer time as agreed to by the Administrative Agent in its sole discretion), the Administrative Agent shall have received all stock certificates or other instruments (if any) representing all such Equity Interests required to be pledged under the Loan Documents, together with stock powers or other instruments of transfer with respect thereto endorsed in blank; provided that the pledge of any shares in respect of any Subsidiaries that are not Wholly-Owned Subsidiaries shall be limited to the shares actually owned by the applicable pledger.

### ARTICLE 7

#### NEGATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Credit Parties that:

#### Indebtedness; Equity Interests.

(a) The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness created under the Loan Documents;

(ii) Indebtedness existing on the Agreement Date and set forth in Schedule 7.1, and any Refinancing Indebtedness with respect thereto ("Existing Indebtedness");

(iii) Indebtedness of the Borrower or any of its Subsidiaries incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Financing Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and any Refinancing Indebtedness with respect thereto, provided that (A) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (B) the aggregate outstanding principal amount of Indebtedness permitted by this clause (iii) shall not, without duplication, exceed \$5,000,000 at any time;

(iv) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the Agreement Date, and any Refinancing Indebtedness with respect thereto, provided that (A) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (B) the aggregate outstanding principal amount of Indebtedness permitted by this clause (iv) shall not, without duplication, exceed \$1,000,000 at any time;

(v) intercompany Indebtedness of the Borrower or any Subsidiary owing to and held by the Borrower or any Subsidiary; provided, however, that Indebtedness of Subsidiaries (other than Subsidiary Guarantors and excluding, for the avoidance of doubt, the amount of any Existing Indebtedness) owing to the Borrower or a Subsidiary Guarantor shall not exceed \$5,000,000 in the aggregate at any time outstanding;

(vi) Guarantees by (A) any Loan Party of Indebtedness of any other Loan Party, (B) any Non-Loan Party Subsidiary of Indebtedness of any other Non-Loan Party Subsidiary, and (C) any Non-Loan Party Subsidiary of any Indebtedness of any Loan Party, provided that, in each case, such Indebtedness is otherwise permitted by this Section 7.1(a);

(vii) obligations under any Swap Agreements permitted by Section 7.7;

(viii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(ix) unsecured guarantees arising as a result of customary indemnification obligations to purchasers that are not Affiliates of a Loan Party in connection with any Disposition permitted by Section 7.5;

(x) Indebtedness incurred in the ordinary course of business under (A) appeal bonds or similar instruments and (B) surety bonds, payment bonds, performance bonds, bid bonds, completion guarantees and similar obligations, workers' compensation claims, health, disability or other employee benefits, and bankers acceptances issued for the account of any Loan Party or its Subsidiaries and unsecured guarantees thereof;

(xi) Earn-Out Obligations owing to sellers incurred in connection with a Permitted Acquisition so long as (a) such Earn-Out Obligations are subordinated on terms reasonably acceptable to the Administrative Agent and (b) the maximum amount of potential liability in respect of such Earn-Out Obligations does not exceed \$10,000,000 in the aggregate at any time outstanding;

(xii) contingent payment obligations and contingent liabilities in respect of any indemnification obligations and adjustments of purchase price, in each case in connection with a Permitted Acquisition;

(xiii) customary Guarantees incurred in connection with the Securitization Program; and

(xiv) additional unsecured Indebtedness in an aggregate principal amount not to exceed \$5,000,000 at any one time outstanding.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, (i) issue any Disqualified Equity Interests, or (ii) be or become liable in respect of any obligation (contingent or otherwise) to purchase, redeem, retire, acquire or make any other payment in respect of any Equity Interests of any Loan Party or any of its Subsidiaries, except as permitted under Section 7.8.

Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the Agreement Date and set forth in Schedule 7.2, provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the Agreement Date and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) any Lien on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary, provided that (i) such Lien secures Indebtedness permitted by Section 7.1(a)(iii), (ii) such Lien and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary;

(e) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Agreement Date prior to the time such Person becomes a Subsidiary, provided that (i) such Lien secures Indebtedness permitted by Section 7.1(a)(iv), (ii) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as applicable, (iii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iv) such Lien shall secure only the Indebtedness and other obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as applicable, and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(f) Liens securing accounts receivable sold pursuant to the Securitization Program;

(g) Liens of a depository bank or securities intermediary permitted by any Control Agreement; and

(h) other Liens securing Indebtedness and other obligations in an aggregate outstanding principal amount not to exceed \$5,000,000.

Fundamental Changes; Business; Fiscal Year. (a) The Borrower will not, and will not permit any of its Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise Dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the Equity Interests issued by any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, provided that, if at the time thereof and immediately after giving effect thereto, no Default shall or would have occurred and be continuing;

(i) any Wholly-Owned Subsidiary (or any Foreign Subsidiary) of the Borrower may merge into or consolidate with (A) the Borrower in a transaction in which the Borrower is the surviving entity, (B) any Subsidiary Guarantor in a transaction in which such Subsidiary Guarantor is the surviving entity, and (C) to the extent such Subsidiary is a Non-Loan Party Subsidiary, any other Non-Loan Party Subsidiary;

(ii) the Borrower or any Subsidiary may merge into or consolidate with any Person in a transaction that is not permitted by Section 7.3(a)(i), provided that (x) in the case of a merger involving the Borrower, the Borrower shall be the surviving entity of such merger, (y) such merger is permitted by Section 7.4 and either (A) the Subsidiary Guarantor shall be the surviving entity or (B) such other Person shall become a Subsidiary Guarantor pursuant to Section 6.12, and (z) such merger shall not be prohibited by Section 7.5;

(iii) (A) any Subsidiary of a Loan Party may sell, transfer, lease or otherwise Dispose of all or substantially all of its assets to the Borrower or to any Subsidiary Guarantor and (B) any Non-Loan Party Subsidiary may sell, transfer, lease or otherwise Dispose of all or substantially all of its assets to the Borrower or any Subsidiary of the Borrower;

(iv) the Borrower or any of its Subsidiaries may sell, transfer, lease or otherwise Dispose of its assets in a transaction that is not permitted by Section 7.3(a)(iii), provided that such sale, transfer, lease or other Disposition is permitted by Section 7.5; and

(v) (A) any Non-Loan Party Subsidiary may liquidate or dissolve so long as any remaining assets are transferred to the Borrower, another Non-Loan Party Subsidiary or a Loan Party and (B) any Subsidiary Guarantor may liquidate or dissolve so long as any remaining assets of such Subsidiary Guarantor are transferred to another Loan Party; provided that, in each case, the Borrower determines in good faith that such liquidation or dissolution is in the best interests of Borrower and its Subsidiaries and is not disadvantageous to the Administrative Agent or any Lender in any material respect.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than an Approved Line of Business.

(c) The Borrower will not, and will not permit any of its Subsidiaries to, change its Fiscal Year.

Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to (i) purchase, hold or acquire (including pursuant to any merger) any Investment, (ii) make or permit to exist any Guarantees of any obligations of, or make or permit to exist any investment or any other interest in, any other Person or (iii) make any Acquisition or purchase or otherwise enter into or become party to any derivative transaction, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments existing on the Agreement Date and set forth in Schedule 5.13 and Schedule 7.4;

(c) equity Investments made by the Borrower in the Equity Interests of any Subsidiary Guarantor or any Non-Loan Party Subsidiary and made by any Subsidiary Guarantor in the Equity Interests of any other Subsidiary Guarantor or any Non-Loan Party Subsidiary; provided that Investments pursuant to this Section 7.4(c) in any Non-Loan Party Subsidiary shall not exceed \$5,000,000 in the aggregate after the Agreement Date less any amounts expended pursuant to subsection (e) below;

(d) Investments constituting Indebtedness made by (i) any Loan Party to any Subsidiary thereof or (ii) any Subsidiary to any Loan Party or another Subsidiary, in each case subject to the limitations set forth in Section 7.1(a)(v) and (vi);

(e) acquisitions made by (i) any Loan Party from any other Loan Party, (ii) any Non-Loan Party Subsidiary from any other Non-Loan Party Subsidiary and (iii) any Non-Loan Party Subsidiary from any Loan Party; provided that, with respect to this clause (ii), the amount of any such Investments shall not exceed \$5,000,000 in the aggregate after the Agreement Date less any amounts expended pursuant to subsection (c) above;

(f) Guarantees permitted by Section 7.1(a);

(g) Swap Agreements permitted by Section 7.7;

(h) Permitted Acquisitions;

(i) payroll, commission, travel and other similar cash advances made to directors (or comparable Persons), officers or employees in the ordinary course of business;

(j) (i) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5 and (ii) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business as a result of insolvency, bankruptcy, reorganization, or other similar proceeding involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(k) Investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with Borrower or any Subsidiary thereof (including in connection with a Permitted Acquisition) so long as such Investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;

(l) deposits of cash made in the ordinary course of business to secure performance of (i) operating leases and (ii) other contractual obligations that do not constitute Indebtedness, including earnest money deposits made in cash in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition;

(m) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business; and

(n) so long as no Default or Event of Default exists or would result therefrom, other Investments in an aggregate amount not to exceed \$5,000,000.

In determining the amount of Investments, acquisitions, loans, and advances permitted under this Section 7.4, Investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein) minus all returns of principal, capital, dividends, distributions and other cash returns thereof and minus all liabilities expressly assumed by another Person in connection with the sale or other Disposition of any Investment, and loans and advances shall be taken at the principal amount thereof then remaining unpaid.

Dispositions. The Borrower will not, and will not permit any of its Subsidiaries to, Dispose of any of its assets except:

(a) issuances of Qualified Equity Interests by any Wholly-Owned Subsidiary of a Loan Party to a Loan Party, subject to the Collateral and Guarantee Requirement and Section 2.7(b)(i)(B);

(b) the sale or lease of inventory in the ordinary course of business;

(c) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Credit Agreement or the other Loan Documents;

(d) the licensing and sublicensing on a non-exclusive basis of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business, and the leasing and subleasing of any other property;

(e) the granting of Liens permitted hereunder and the other transactions permitted by Section 7.2;

(f) the sale or exchange of any assets or debt or equity securities of Sequential Technology Holdings LLC and/or Sequential Technology International LLC;

(g) the abandonment, cancellation or lapse of issued patents, registered trademarks and other registered intellectual property of a Loan Party or Subsidiary thereof to the extent, in such Loan Party's reasonable business judgment, not economically desirable in the conduct of such Loan Party's business or so long as such lapse is not materially adverse to the interests of the Lenders and the expiration of patents in accordance with their statutory terms;

(h) the sale of assets (other than Equity Interests of any Wholly-Owned Subsidiary, unless all of the Equity Interests of such Wholly-Owned Subsidiary (other than the Borrower) are sold in accordance with this clause (h)) for at least fair market value, so long as (A) no Default then exists or would immediately result therefrom, (B) at least 75% of the consideration received by the applicable Loan Party consists of cash or Cash Equivalents and is paid at the time of the closing of such sale and (C) the aggregate amount of the cash and non-cash proceeds received from all assets sold pursuant to this clause (h) shall not exceed \$15,000,000 in the aggregate during the term of this Credit Agreement (for this purpose, using the fair market value of property other than cash and Cash Equivalents);

(i) Dispositions of assets acquired by the Borrower and its Subsidiaries pursuant to a Permitted Acquisition consummated within 12 months of the date of such Permitted Acquisition in an aggregate amount not to exceed \$5,000,000 for each such Permitted Acquisition;

(j) any trade in of equipment in exchange for other equipment in the ordinary course of business;

(k) the sale of any accounts receivables pursuant to the terms of the Securitization Program; and

(l) the unwinding or terminating of hedging arrangements or transactions contemplated by any Swap Agreement which are not prohibited hereunder.

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 7.5 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 7.5, such Collateral (unless sold to a Loan Party) shall be sold automatically free and clear of the Liens created by the Collateral Documents and, at the expense of the Loan Parties, the Administrative Agent shall take all reasonable actions any Loan Party reasonably requests in writing in order to effect the foregoing.

Sale and Lease Back Transactions. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Sale and Leaseback arrangement, directly or indirectly, with any Person.

Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any Subsidiary) and that are not for speculative purposes, and (b) Swap Agreements entered into in order to 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 Loan Party or Subsidiary.

Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay for or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(a) subject to the Collateral and Guarantee Requirement, any Subsidiary of the Borrower may declare and pay, and agree to pay, dividends and other distributions with respect to its Equity Interests payable solely in perpetual common Equity Interests (other than Disqualified Equity Interests),

(b) any Subsidiary of the Borrower may declare and pay dividends or other distributions with respect to its Equity Interests to the Borrower or any Subsidiary Guarantor,

(c) the making of dividends or distributions by a Non-Loan Party Subsidiary to a Loan Party or another Non-Loan Party Subsidiary, and

(d) the Borrower and its Subsidiaries may make cash payments with respect to the Convertible Stock, so long as both before and after giving effect to any such payment on a Pro Forma Basis, (i) the Borrower shall be in compliance with the financial covenants set forth in Section 7.12, (ii) the Consolidated Leverage Ratio shall be 0.50x less than the maximum Consolidated Leverage Ratio permitted under Section 7.12(a) at such time, (iii) no Default or Event of Default shall exist or would result therefrom and (iv) the Borrower has Liquidity of not less than \$15,000,000.

Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, Dispose (including pursuant to a merger) of any property or assets to, or purchase, lease or otherwise acquire (including pursuant to a merger) any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except transactions in the ordinary course of business and at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties (it being understood that this Section shall not apply to any transaction that is expressly permitted under Sections 7.1, 7.3, 7.4, 7.5 or 7.8 of this Credit Agreement between or among the Loan Parties and not involving any other Affiliate; provided, that a Disposition of Sequential Technology Holdings LLC and/or Sequential Technology International LLC pursuant to Section 7.5(f) shall not be prohibited by this Section.

Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its property or assets (unless such agreement or arrangement does not prohibit, restrict or impose any condition upon the ability of any Loan Party to create, incur or permit to exist, or the ability of the Administrative Agent to exercise any right or remedy with respect to, any Lien in favor of the Secured Parties created under the Loan Documents) or (b) the ability of any Subsidiary to pay dividends or make other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary, provided that (i) the foregoing shall not apply to (A) restrictions and conditions imposed by law or by the Loan Documents, (B) restrictions and conditions existing on the Agreement Date identified on Schedule 7.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), and (C) customary restrictions and conditions contained in agreements relating to the sale of a subsidiary pending such sale, provided that such restrictions and conditions apply only to its Subsidiary that is to be sold and such sale is permitted hereunder, (ii) clause (a) of this Section shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Credit Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (iii) clause (a) of this Section shall not apply to customary provisions in agreements restricting the assignment thereof.

Amendment of Material Documents. The Borrower will not, and will not permit any of its Subsidiaries to, amend, supplement modify or waive any of its rights under any Subordinated Debt Document, any of its Organizational Documents, other than immaterial amendments, modifications or waivers that could not reasonably be expected to adversely affect the Credit Parties, provided that the Borrower shall deliver or cause to be delivered to the Administrative Agent and each Lender a copy of all amendments, modifications or waivers thereto promptly after the execution and delivery thereof.

#### Financial Covenants.

(a) Consolidated Leverage Ratio. The Borrower will not permit the Consolidated Leverage Ratio as of the end of any fiscal quarter during any period set forth in the following table to be greater than the ratio set forth therein with respect to such period:

<b>Period</b>	<b>Ratio</b>
Closing Date through (and including) <b>September 30, 2020</b>	3.00:1.00
<b>October 1, 2020</b> and thereafter	2.75:1.00

(b) Consolidated Fixed Charge Coverage Ratio. The Borrower will not permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter to be less than 1.20:1.00.

Payments on Subordinated Debt. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay for or make, directly or indirectly, any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Indebtedness of such Person which is subordinated to the payment of the Loan Document Obligations except that so long as no Default shall have occurred and shall be continuing or would immediately result therefrom, the Borrower or any Subsidiary may make payments of Subordinated Debt to the extent permitted by the subordination provisions applicable thereto.

Government Regulation. The Borrower will not, and will not permit any of its Subsidiaries to, (a) at any time be or become the subject of any law, regulation, or list of any government agency (including the United States Office of Foreign Asset Control list) that prohibits or limits any Lender from making any loans or extension of credit (including the Loans and the Letters of Credit) to any Loan Party or from otherwise conducting business with any Loan Party, or (b) fail to provide documentary and other evidence of any Loan Party's



identity as may be requested by any Credit Party at any time to enable such Credit Party to verify any Loan Party's identity or to comply with any applicable law or regulation, including Section 326 of the USA PATRIOT Act.

Hazardous Materials. The Borrower will not, and will not permit any of its Subsidiaries or agents to, cause or permit a Release or threat of Release of Hazardous Materials on, at, in, above, to, from or about any of the property where such Release or threat of Release would (a) violate, or form the basis for any Environmental Claims under, any Environmental Law or any Environmental Permit or (b) otherwise adversely impact the value or marketability of any property of any Loan Party or any of its Subsidiaries or any of the Collateral, other than such Release, violation or Environmental Claim as could not reasonably be expected to result in a material Environmental Liability.

## ARTICLE 8

EVENTS OF DEFAULTEvents of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment of Principal or L/C Disbursement. Any Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise.

(b) Other Non-Payment. Any Loan Party shall fail to pay any interest on any Loan or on any reimbursement obligation in respect of any L/C Disbursement or any fee, commission or any other amount (other than an amount referred to in clause (a) of this Section) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue uncured for a period of five Business Days.

(c) Representations and Warranties. Any representation or warranty made or deemed made by or on behalf of any Loan Party or any of its Subsidiaries in or in connection with any Loan Document or any amendment or modification hereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) Specific Covenants. Any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Sections 6.1, 6.2(a), 6.3, 6.7, 6.8, 6.10, or 6.12, in Article 7 or any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in the Guarantee Agreement or any Collateral Document to which it is a party.

(e) Other Covenants. Any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document to which it is a party (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue uncured for a period of 30 days after the occurrence thereof.

(f) Cross Default - Payment Default on Material Indebtedness. Any Loan Party shall fail to make any payment (whether of principal, interest or otherwise and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable (after giving effect to any applicable grace or cure period).

(g) Other Cross-Defaults. (i) Any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or payment date, or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due prior to their scheduled maturity or payment date or to require the prepayment, repurchase, redemption or defeasance thereof prior to their scheduled maturity or payment date (in each case after giving effect to any applicable notice and any applicable cure period), provided that this clause (g) shall not apply to secured Indebtedness that becomes due solely as a result of the voluntary sale, transfer or other disposition of the property or assets securing such Indebtedness; or (ii) any Loan Party or any of its Subsidiaries shall breach or default on any payment obligation constituting a Swap Agreement Obligation.

(h) Involuntary Proceedings. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Loan Party or any of its Subsidiaries or its debts, or of a substantial part of its assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 45 days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) Voluntary Proceedings. Any Loan Party or any of its Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing.

(j) Inability to Pay Debts. Any Loan Party or any of its Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) Judgments. One or more judgments for the payment of money in an aggregate amount in excess of the Threshold Amount shall be rendered against any Loan Party or any of its Subsidiaries or any combination thereof (which shall not be fully covered (without taking into account any applicable deductibles) by insurance from an unaffiliated insurance company with an A.M. Best financial strength rating of at least A-, it being understood that even if such amounts are covered by insurance from such an insurance company, such amounts shall count against such basket if responsibility for such amounts has been denied by such insurance company) and the same shall

remain undischarged or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any of its Subsidiaries to enforce any such judgment.

(l) ERISA Events. (i) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of any Loan Party or any of its Subsidiaries (or in the case of an ERISA Event described in subsection (b) of the definition of that term, could reasonably be expected to subject any Loan Party, any of its Subsidiaries, any Pension Plan, any trust created thereunder, any trustee or administrator thereof, or any party dealing with any Pension Plan or trust to a tax or penalty on “prohibited transactions” under Section 502 of ERISA or Section 4975 of the Code) in an aggregate amount exceeding the Threshold Amount for all periods, (ii) an ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (iii) a Loan Party or ERISA Affiliate shall fail to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; (iv) any event similar to the foregoing shall occur or exist with respect to a Foreign Plan; or (v) there shall be at any time a Lien imposed against the assets of any Loan Party or ERISA Affiliate under Section 412 or Section 430 of the Code or Sections 302, Section 303, or Section 4068 of ERISA.

(m) Invalidate of Loan Documents. Any Loan Document shall cease, for any reason, to be in full force and effect, or any Loan Party shall so assert in writing or shall disavow any of its obligations thereunder.

(n) Liens. Any Lien purported to be created under any Collateral Document shall cease to be a valid and perfected Lien on a material portion of any Collateral, with the priority required by the applicable Collateral Document, except (i) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (ii) as a result of the Administrative Agent’s failure to maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security Agreement.

(o) Licenses. There shall occur the loss, suspension or revocation of, or failure to renew any license or permit now held or hereafter acquired if such loss, suspension, revocation or failure to renew would reasonably be expected to result in a Material Adverse Effect.

Remedies Upon Event of Default. If any Event of Default occurs and is continuing, then, and in every such event (other than an event described in Section 8.1(h) or (i)), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions (whether before or after the Closing Date), at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of each Loan Party accrued under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto) and thereupon such Cash Collateral shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and in case of any event described in Section 8.1(h) or (i), the Commitments shall automatically terminate (whether before or after the Closing Date) the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of each Loan Party accrued under the Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and Cash Collateral for the L/C Obligations as described above shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Application of Funds. After the exercise of remedies provided for in Section 8.2 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in Section 2.10), any amounts received on account of the Secured Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article 3), in each case payable to the Administrative Agent in its capacity as such;

Second, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the L/C Issuer and the L/C Fronting Fee), in each case payable to the L/C Issuer in its capacity as such;

Third, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts, payable to the Credit Parties (including fees, charges and disbursements of counsel to the respective Credit Parties and amounts payable under Article 3 but excluding fees described in Section 3.2(b)), ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting accrued and unpaid fees under Section 3.2(b) and interest on the Loans, L/C Obligations and other Secured Obligations, ratably among the Credit Parties in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting unpaid principal of the Loans and L/C Obligations, the Cash Management Obligations and the Swap Agreement Obligations, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amounts of Letters of Credit, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Credit Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Secured Obligations owing to the Administrative Agent and the Lenders on such date; and

Last, to the extent of any excess of such proceeds, the balance, if any, after all of the Secured Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations in each case not yet due and payable) have been paid in full, to the Borrower or as otherwise required by law.

Subject to Section 2.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the Secured Obligations, if any, in the order set forth above. Notwithstanding anything to the contrary set forth above, Excluded CEA Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

## ARTICLE 9

### THE ADMINISTRATIVE AGENT

Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Citizens Bank 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. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. 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.

Rights as a Lender. 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 Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Exculpatory Provisions. (a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not 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); 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

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and 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 the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) 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 Section 8.2 and Section 11.2), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender or the L/C Issuer.

(c) 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 Credit 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, (iv) the validity, enforceability, effectiveness or genuineness of this Credit Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to investigate a violation or potential violation of an Environmental Law or a Release or threat of Release of a Hazardous Material pursuant to Section 6.13, nor shall it have any liability for any action it takes or does not take in connection with any such investigation.

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 or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer 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 the Borrower), 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.

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 Article 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 Credit Facilities as well as activities as 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.

Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer 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, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 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 and the L/C Issuer, appoint a successor Administrative Agent 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. 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 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 Lenders or the L/C Issuer 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 (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 and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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. 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 this Article and Section 10.3 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 Administrative Agent.

(d) Any resignation by, or removal of, Citizens Bank as Administrative Agent pursuant to this Section shall also constitute its resignation as the L/C Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Lender, if in its sole discretion it elects to, (ii) the retiring L/C Lender shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Lender to effectively assume the obligations of the retiring L/C Lender with respect to such Letters of Credit.

Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges 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 credit analysis and decision to enter into this Credit Agreement. Each Lender and the L/C Issuer also acknowledges 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 decisions in taking or not taking action under or based upon this Credit Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Lead Arranger or any agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

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 reimbursement for any L/C Disbursement 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, L/C Obligations and all other Loan Document Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Section 10.3) 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 and the L/C Issuer 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 and the L/C Issuer, 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 Section 10.3; provided that nothing in this Section 9.9 shall prohibit any Lender from filing its own proof of claim with respect to the Loans, L/C Obligations and Loan Documents Obligations owing to it.

Collateral and Guarantee Matters.(a) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (A) at the Termination Date, (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 under the Loan Documents (including all of the Collateral of a Guarantor which is released from its obligations under the Loan Documents pursuant to clause (iii) below); provided, however, any sale or Disposition of all or substantially all of the Collateral or all or substantially all of the value of the Guarantees under the Guarantee Agreement shall be subject to Section 10.2(b), or (C) subject to Section 10.2, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any 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 Section 7.2(d); and

(iii) to release any Guarantor from its obligations under the Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents, provided, however, that the release of all or substantially all of the Collateral or all or substantially all of the value of the Guarantees under the Guarantee Agreement shall be subject to Section 10.2(b).

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 Loan Documents 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.

Compliance with Flood Insurance Laws. The Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the Flood Insurance Laws and will post on the applicable electronic platform (or otherwise distribute to each Lender documents that it receives in connection with the Flood Insurance Laws (collectively, the "Flood Documents"); provided, however that the Administrative Agent makes no representation or warranty with respect to the adequacy of the Flood Documents or their compliance with the Flood Insurance Laws. Each Lender acknowledges and agrees that it is individually responsible for its own compliance with the Flood Insurance Laws and that it shall, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, including the Flood Documents posted or distributed by the Administrative Agent, continue to do its own due diligence to ensure its compliance with the Flood Insurance Laws.

Cash Management Obligations and Swap Agreement Obligations. Except as otherwise expressly set forth herein or in the Security Agreement, any other Collateral Document or any other Loan Document, no Person holding Cash Management Obligations or Swap

Agreement Obligations that obtains the benefits of any Guarantee under the Guarantee Agreement or any Collateral by virtue of the provisions hereof or of any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral or amendment to any Loan Document (including any Collateral Document) other than in its capacity as a Lender or Administrative Agent and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 9 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations or Swap Agreement Obligations except to the extent expressly required hereunder, provided that the Administrative Agent has received a Secured Obligation Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Person holding such Secured Obligations. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations and Swap Agreement Obligations in the case of the Termination Date.

## ARTICLE 10

### MISCELLANEOUS Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to any Loan Party, c/o Synchronoss Technologies, Inc., 200 Cross Boulevard, 8<sup>th</sup> Floor, Bridgewater, New Jersey 08807, Attention: General Counsel (email: [legal@synchronoss.com](mailto:legal@synchronoss.com)); Website: <https://synchronoss.com/>.

(ii) the Administrative Agent or the L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.1; and

(iii) if to any other Credit Party, the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Credit Parties hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Credit Party pursuant to Article 2 if such Credit Party has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower 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 e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that 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, 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 e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications available to the L/C Issuer and the other Lenders by posting the Communications on the Platform and that certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities.

(ii) The Borrower hereby acknowledges and agrees that so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Communications that may be distributed to the Public Lenders and that: (A) all such Communications (i) shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (B) by marking such Communications (ii) "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, Lead Arranger and the Lenders to treat such Communications as not containing any material non-public information (although it may be sensitive and proprietary) with respect to any Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Communications constitute Information, they shall be treated as set forth in Section 10.14); (C) all Communications marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (D) the Administrative Agent and the Lead Arranger shall be entitled to treat any Communications that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information".

(iii) 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 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 or entity 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 any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform.

Waivers; Amendments.(a) No failure or delay by any Credit Party in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan and/or the issuance, amendment, extension or renewal of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Credit Party may have had notice or knowledge of such Default at the time.

(b) Except as expressly provided by Section 3.3(b), or in the other paragraphs of this Section 10.2, neither this Credit Agreement, any other Loan Document (other than the Engagement Letter) nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders (or, in the case of waivers of any condition precedent to any Revolving Borrowing set forth in Section 4.2, the Required Class Lenders in respect of the Revolving Facility), or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall:

(i) extend or increase any Commitment of any Lender without the written consent of such Lender or increase the L/C Sublimit without the consent of the L/C Issuer (it being understood that a waiver of any condition precedent set forth in Article 4 or the waiver of any Default shall not constitute an extension or increase of any Commitment of any Lender or an increase of the L/C Sublimit);

(ii) reduce the principal amount of any Loan or any reimbursement obligation with respect to a L/C Disbursement, or reduce the rate of any interest, or reduce any fees or other amounts, payable under the Loan Documents, without the written consent of each Credit Party directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary to amend or modify any Financial Covenant, any defined terms used therein or to waive any obligation of the Borrower to pay interest at the Default Rate, in each case, notwithstanding the fact that any such amendment, modification or waiver actually results in reduction in the rate of interest or fees;

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Loan or reimbursement obligation with respect to any L/C Disbursement, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone the stated termination or expiration of the Revolving Commitments or reduce the amount of or postpone the date of any prepayment required by Section 2.7(b) without the written consent of each Credit Party directly and adversely affected thereby;

(iv) except as provided in Section 2.10 and subsection (c) below, change any provision hereof in a manner that would alter the pro rata sharing of payments required by Section 2.8(b) or Section 8.3 or the pro rata reduction of Revolving Commitments required by Section 2.5(d), without the written consent of each Credit Party directly and adversely affected thereby;

(v) change any of the provisions of this Section or the definition of the terms “Required Lenders” or “Required Class Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder;

(vi) amend, modify or waive any provision of Section 2.10 without the written consent of the Administrative Agent and the L/C Issuer;

(vii) change the currency in which any Commitment or Loan is, or is to be, denominated, Letters of Credit are to be issued or payment under the Loan Documents is to be made without the written consent of each Lender directly affected thereby;

(viii) release any Guarantor from its Guarantee under the Guarantee Agreement (except as expressly provided therein or in Section 9.10), or limit its liability in respect of such Guarantee, without the written consent of each Lender;

(ix) release all or substantially all of the Collateral from the Liens of the Loan Documents or subordinate all or substantially all of the Liens of the Administrative Agent in the Collateral, in each case without the written consent of each Lender;

(x) amend, modify or waive any provision of Section 8.3 without the written consent of all of the Lenders; or

(xi) amend Section 10.4(a) with respect to the assignment or transfer by any Loan Party of such Loan Party’s rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 7.3), in each case, without the written consent of each Lender; and

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of (A) the Administrative Agent, unless in writing executed by the Administrative Agent and (B) any Issuing

Bank, unless in writing executed by such Issuing Bank, in each case in addition to the Borrower and the Lenders required above.

(c) Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loan may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

(d) In addition, notwithstanding anything in this Section to the contrary, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within ten Business Days following receipt of notice thereof.

Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Loan Parties, jointly and severally, shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, Lead Arranger and their respective Affiliates (including Attorney Costs of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Credit 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 out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, Lead Arranger or any Credit Party (including Attorney Costs of the Administrative Agent or any Credit Party), in connection with the enforcement or protection of its rights (whether through negotiations, legal proceedings or otherwise) (A) in connection with this Credit 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 hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by Loan Parties. The Loan Parties, jointly and severally, shall indemnify the Administrative Agent (and any sub-agent thereof), each Credit Party, 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 Attorney Costs), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Credit 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 L/C Issuer 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 Hazardous Materials at, on, under or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Claim or Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (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 any Loan Party, and regardless of whether any Indemnitee is a party thereto or (v) any government investigation, audit, hearing or enforcement action resulting from any Loan Party’s or any of its Affiliate’s noncompliance (or purported noncompliance) with any applicable Sanctions, other Anti-Terrorism Laws or Anti-Corruption Laws (it being understood and agreed that the Indemnitees shall be entitled to indemnification pursuant to this clause (including indemnification for fines, penalties and other expenses) regardless of whether any adverse finding is made against any Loan Party or any of its Affiliates), 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 non-appealable judgment to have resulted from bad faith, the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. To the extent that the indemnity set forth above in this paragraph shall be held to be unenforceable in whole or in part because it is violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified amounts incurred by Indemnitees or any of them.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly 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 L/C Issuer 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 L/C Issuer 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 L/C Issuer 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 Lender’s Applicable 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 L/C Issuer 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 L/C Issuer in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.8(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party 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 Credit Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, 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 Credit 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 and in no event later than ten Business Days after demand therefor.

Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no 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 paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit 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 Credit Party) any legal or equitable right, remedy or claim under or by reason of this Credit 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 Credit Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); provided that 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 Credit 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 unless each of the Administrative Agent and, subject to paragraph (b)(iii) of this Section, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed).

(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 Credit 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 Classes on a non-pro rata basis.

(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 (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender (other than a Defaulting Lender), an Affiliate of a Lender (other than a Defaulting 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 ten (10) Business Days after written notice of such assignment shall have delivered to the Borrower; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Credit Facilities;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of (i) the Revolving Facility or any unfunded Incremental Term Loan Commitment 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) a funded Incremental Term Facility to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer 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 (which, for the avoidance of doubt, will not be required to be paid by the Borrower or its Subsidiaries), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. In addition, each assignee shall, on or before the effective date of such assignment, deliver to the Borrower and the Administrative Agent certification as to exemption from deduction or withholding of any United States Taxes in accordance with Section 3.6(g).

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof, (C) a Person who, at the time of such assignment, is a Sanctioned Person if such assignment would violate applicable law, (D) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) or (E) Siris Capital or any Affiliate of Siris Capital.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust 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 prior written 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 or any 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 in accordance with its Applicable 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 Credit 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 Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit 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 Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 3.4, Section 3.5, Section 3.6 and Section 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this paragraph shall be treated for purposes of this Credit 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 an agent of the Borrower, shall maintain 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 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, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement, notwithstanding notice to the contrary. 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 (w) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (x) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (y) any Defaulting Lender or any of its subsidiaries or (z) a Person who, at the time of such participation, is a Sanctioned Person if the sale of such participation would violate applicable law) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Revolving Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Credit 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 and each Credit Party shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement.

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 Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit 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 described in Section 10.2(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.4, 3.5 and 3.6 (subject to the requirements and limitations therein, including the requirements under Section 3.6 (it being understood that the documentation required under Section 3.6(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.7 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.5 or 3.6, 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 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 3.7(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.8 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.8(h) 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 Credit 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 Credit Agreement and the Loan Documents 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) Cashless Settlement. Notwithstanding anything to the contrary contained in this Credit Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Credit Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Credit Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of any Loan Document and the making of any Loans and the issuance of any Letter of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any L/C Obligation or any fee or any other amount payable under the Loan Documents is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 3.4, 3.5, 3.6, 10.3, 10.9, and 10.10 and Article 9 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby or the Termination Date.

Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Credit Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Credit Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Credit Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Credit Agreement by facsimile or in electronic (e.g., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Credit Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in 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.

Severability. In the event any one or more of the provisions contained in this Credit Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Right of Setoff. If an Event of Default shall have occurred and be continuing, each Credit Party and each of their respective Affiliates is hereby authorized at any time and from time to time, 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 whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Credit Party or any such Affiliate to or for the credit or the account of any Loan Party or any of its Subsidiaries against any and all of the obligations of such Loan Party or such Subsidiary now or hereafter existing under this Credit Agreement or any other Loan Document to such Credit Party or Affiliate, irrespective of whether or not such Credit Party shall have made any demand under this Credit Agreement or any other Loan Document and although such obligations of such Loan Party or Subsidiary may be contingent or unmatured or are owed to a branch or office of such Credit Party different from the branch or office holding such deposit or obligated on such indebtedness, provided, that in the event that any Defaulting Lender shall exercise any 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 2.9 and, pending such payment, shall be segregated by such Defaulting Lender 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 Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Credit Party and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Credit Party and its Affiliates may have. Each Credit Party agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

Governing Law; Jurisdiction; Consent to Service of Process.(a) Governing Law. This Credit Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) Submission to Jurisdiction. Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York and any appellate court from any thereof, in any action or proceeding arising out of or relating to

this Credit Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Credit Agreement or in any other Loan Document shall affect any right that any Credit Party may otherwise have to bring any action or proceeding relating to this Credit Agreement or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction.

(c) Waiver of Objection to Venue. Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Credit Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each of the parties hereto irrevocably consents to service of process in the manner provided for notices in Section 10.1. Nothing in this Credit Agreement will affect the right of any party to this Credit Agreement to serve process in any other manner permitted by law.

WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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 proceeding under any Debtor Relief Law or Fraudulent Transfer Law, 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 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.

Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Credit Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Credit Agreement.

Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or L/C Obligation, together with all fees, charges and other amounts that are treated as interest thereon under applicable law (collectively the "charges"), shall exceed the maximum lawful rate (the "maximum rate") that may be contracted for, charged, taken, received or reserved by the Lender holding an interest in such Loan or L/C Obligation in accordance with applicable law, the rate of interest payable in respect of such Loan or L/C Obligation hereunder, together with all of the charges payable in respect thereof, shall be limited to the maximum rate and, to the extent lawful, the interest and the charges that would have been payable in respect of such Loan or L/C Obligation but were not payable as a result of the operation of this Section shall be cumulated, and the interest and the charges payable to such Lender in respect of other Loans or L/C Obligations or periods shall be increased (but not above the maximum rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Treatment of Certain Information; Confidentiality.(a) Each Credit Party agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (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), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Credit Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Credit Agreement or (B) 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 Credit Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower, its Subsidiaries or the Credit Facilities or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facilities, (viii) with the consent of the Borrower or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower or (C) is independently generated by the Administrative Agent, any Credit Party or any of their respective Affiliates. In addition, the Administrative Agent and the Lenders may disclose the existence of this Credit Agreement and information about this Credit Agreement to market data collectors, league table providers and other similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Credit Agreement, the other Loan Documents, and the Commitments.

(b) For purposes of this Section, “Information” means all information received from any Loan Party or any of its Subsidiaries relating to any Loan Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any other Credit Party on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary or that is independently prepared by the Administrative Agent or any other Credit Party, provided that, in the case of information received from any Loan Party or any of its Subsidiaries after the Agreement Date, 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. Notwithstanding anything herein to the contrary, “Information” shall not include, and each Credit Party (and their Affiliates and respective partners, directors, officers, employees, agents, advisors and representatives) may disclose to any and all persons, without limitation of any kind, any information with respect to the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such Credit Party relating to such tax treatment and tax structure.

(c) The Loan Parties agree, on behalf of themselves and their Affiliates, that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Credit Agreement or any of the other Loan Documents without the prior written consent of such Person, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event, the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the Transactions using the name, product photographs, logo or trademark of the Loan Parties.

USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with the USA PATRIOT Act.

No Fiduciary Duty. Each Loan Party agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, such Loan Party and its Affiliates, on the one hand, and the Administrative Agent, the Lead Arranger, the Documentation Agent, the Syndication Agent, the other Credit Parties and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lead Arranger, the Documentation Agent, the Syndication Agent, the other Credit Parties or their respective Affiliates and no such duty will be deemed to have arisen in connection with any such transactions or communications.

Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA 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 an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such 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 EEA 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 Credit 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 any EEA Resolution Authority.

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, the Lead Arranger and its 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the 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 Credit 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 Credit Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit 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 Credit 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.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in 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, 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, the Lead Arranger and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Lead Arranger or any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Credit Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent and the Lead Arranger hereby inform the Lenders that each such Person is not undertaking to provide impartial 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 and this Credit Agreement, (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.

#### Section 10.19 Acknowledgement Regarding any Supported QFCs.

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, “QFC Credit Support,” and each such QFC, a “Supported QFC”), the parties 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 Credit 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 or such QFC Credit Support) 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 Credit 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 Credit 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 10.19, the following terms have the following meanings:

“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.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“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.

“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).

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SYNCHRONOSS TECHNOLOGIES, INC.

By: /s/ Glenn Lurie  
Name: Glenn Lurie  
Title: President and Chief Executive Officer

CITIZENS BANK, N.A., as the  
Administrative Agent, the L/C Issuer and a  
Lender

By: /s/ Harold Corban  
Name: Harold Corban  
Title: Senior Vice President

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**SCHEDULE 2.1**

**COMMITMENTS**

<b><u>Lenders</u></b>	<b><u>Revolving Credit Commitment</u></b>	<b><u>Revolving Credit Commitment Percentage</u></b>	<b><u>Total Commitment</u></b>
Citizens Bank, N.A.	\$10,000,000	100%	\$10,000,000
<b>Total</b>	\$10,000,000	100%	\$10,000,000

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-136088) pertaining to the 2006 Equity Incentive Plan of Synchronoss Technologies, Inc.,
- (2) Registration Statement (Form S-8 No. 333-167000) pertaining to the 2006 Equity Incentive Plan of Synchronoss Technologies, Inc.,
- (3) Registration Statement (Form S-8 No. 333-168745) pertaining to the 2010 New Hire Equity Incentive Plan of Synchronoss Technologies, Inc.,
- (4) Registration Statement (Form S-8 No. 333-179544) pertaining to the Employee Stock Purchase Plan of Synchronoss Technologies, Inc.,
- (5) Registration Statement (Form S-8 No. 333-188939) pertaining to the 2006 Equity Incentive Plan of Synchronoss Technologies, Inc.,
- (6) Registration Statement (Form S-8 No. 333-204311) pertaining to the 2015 Equity Incentive Plan of Synchronoss Technologies, Inc., and
- (7) Registration Statement (Form S-8 No. 333-230539) pertaining to the Synchronoss Technologies, Inc. 2017 New Hire Equity Incentive Plan, Glenn Lurie Inducement Awards and Synchronoss Technologies, Inc. Employee Stock Purchase Plan;

of our reports dated March 16, 2020, with respect to the consolidated financial statements and schedule of Synchronoss Technologies, Inc. and the effectiveness of internal control over financial reporting of Synchronoss Technologies, Inc. included in this Annual Report (Form 10-K) of Synchronoss Technologies, Inc. for the year ended December 31, 2019.

/s/ Ernst & Young LLP  
Iselin, New Jersey  
March 16, 2020



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECURITIES AND EXCHANGE COMMISSION RULE 13a-14(a)**

I, Glenn Lurie, certify that:

1. I have reviewed this Annual Report on Form 10-K of Synchronoss Technologies, Inc. for the year ended December 31, 2019;
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 Rule 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 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: March 16, 2020

/s/ Glenn Lurie

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**Glenn Lurie**

**Chief Executive Officer**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECURITIES AND EXCHANGE COMMISSION RULE 13a-14(a)**

I, David Clark, certify that:

1. I have reviewed this Annual Report on Form 10-K of Synchronoss Technologies, Inc. for the year ended December 31, 2019;
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 Rule 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 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: March 16, 2020

/s/ David Clark

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**David Clark**  
**Chief Financial Officer**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Synchronoss Technologies, Inc. (the “Company”) for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Glenn Lurie, the Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being provided pursuant to 18 U.S.C. 1350 and is not to be deemed a part of the Report, nor is it to be deemed to be “filed” for any purpose whatsoever.

Date: March 16, 2020

/s/ Glenn Lurie

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**Glenn Lurie**

**Chief Executive Officer**

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Synchronoss Technologies, Inc. (the “Company”) for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, David Clark, the Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being provided pursuant to 18 U.S.C. 1350 and is not to be deemed a part of the Report, nor is it to be deemed to be “filed” for any purpose whatsoever.

Date: March 16, 2020

/s/ David Clark

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**David Clark**  
**Chief Financial Officer**

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.