

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 10-Q**

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

For the quarterly period ended September 30, 2022

OR

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

For the transition period from        to

Commission file number 1-32600

**TUCOWS INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Pennsylvania**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**23-2707366**  
(I.R.S. Employer  
Identification No.)

**96 Mowat Avenue,  
Toronto, Ontario M6K 3M1, Canada**  
(Address of Principal Executive Offices) (Zip Code)

**(416) 535-0123**  
(Registrant's Telephone Number, Including Area Code)

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

| <b>Title of each class</b> | <b>Trading<br/>Symbol(s)</b> | <b>Name of each exchange on which registered</b> |
|----------------------------|------------------------------|--------------------------------------------------|
| Common Stock               | TCX                          | NASDAQ                                           |

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, 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 ☐

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 ☒

As of November 1, 2022, there were 10,793,390 outstanding shares of common stock, no par value, of the registrant.

**TUCOWS INC.**  
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**TRADEMARKS, TRADE NAMES AND SERVICE MARKS**

Tucows®, EPAG®, Hover®, OpenSRS®, Platypus®, Ting®, eNom®, Bulkregister®, Ascio®, Cedar®, Simply Bits®, Wavelo® and YummyNames® are registered trademarks of Tucows Inc. or its subsidiaries. Other service marks, trademarks and trade names of Tucows Inc. or its subsidiaries may be used in this Quarterly Report on Form 10-Q (this “Quarterly Report”). All other service marks, trademarks and trade names referred to in this Quarterly Report are the property of their respective owners. Solely for convenience, any trademarks referred to in this Quarterly Report may appear without the ® or TM symbol, but such references are not intended to indicate, in any way, that we or the owner of such trademark, as applicable, will not assert, to the fullest extent under applicable law, our or its rights, or the right of the applicable licensor, to these trademarks.

**PART I. FINANCIAL INFORMATION**  
**Item 1. Consolidated Financial Statements**  
**Tucows Inc.**  
**Consolidated Balance Sheets**

(Dollar amounts in thousands of U.S. dollars)  
(unaudited)

|                                                                                                                                                                                                    | September 30,<br>2022 | December 31,<br>2021 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------|
| <b>Assets</b>                                                                                                                                                                                      |                       |                      |
| <b>Current assets:</b>                                                                                                                                                                             |                       |                      |
| Cash and cash equivalents                                                                                                                                                                          | \$ 30,506             | \$ 9,105             |
| Accounts receivable, net of allowance for doubtful accounts of \$736 as of September 30, 2022 and \$541 as of December 31, 2021                                                                    | 14,718                | 14,579               |
| Contract asset, current portion (note 10)                                                                                                                                                          | 3,451                 | 778                  |
| Inventory                                                                                                                                                                                          | 5,888                 | 3,277                |
| Prepaid expenses and deposits                                                                                                                                                                      | 18,627                | 20,986               |
| Derivative instrument asset, current portion (note 5)                                                                                                                                              | 2,015                 | 299                  |
| Deferred costs of fulfillment, current portion (note 11)                                                                                                                                           | 94,324                | 94,506               |
| Income taxes recoverable                                                                                                                                                                           | 2,745                 | 3,474                |
| Total current assets                                                                                                                                                                               | 172,274               | 147,004              |
| Contract asset, long-term portion (note 10)                                                                                                                                                        | 4,611                 | -                    |
| Deferred costs of fulfillment, long-term portion (note 11)                                                                                                                                         | 17,602                | 18,205               |
| Derivative instrument asset, long-term portion (note 5)                                                                                                                                            | -                     | 278                  |
| Investments                                                                                                                                                                                        | 2,012                 | 2,012                |
| Deferred tax asset                                                                                                                                                                                 | 14                    | 22                   |
| Property and equipment                                                                                                                                                                             | 254,159               | 172,662              |
| Right of use operating lease asset                                                                                                                                                                 | 20,702                | 17,515               |
| Contract costs                                                                                                                                                                                     | 1,687                 | 1,079                |
| Intangible assets (note 6)                                                                                                                                                                         | 41,996                | 50,409               |
| Goodwill (note 6)                                                                                                                                                                                  | 130,410               | 130,410              |
| Total assets                                                                                                                                                                                       | \$ 645,467            | \$ 539,596           |
| <b>Liabilities and Stockholders' Equity</b>                                                                                                                                                        |                       |                      |
| <b>Current liabilities:</b>                                                                                                                                                                        |                       |                      |
| Accounts payable                                                                                                                                                                                   | \$ 18,538             | \$ 10,016            |
| Accrued liabilities                                                                                                                                                                                | 17,196                | 15,240               |
| Customer deposits                                                                                                                                                                                  | 14,773                | 16,974               |
| Derivative instrument liability, current portion (note 5)                                                                                                                                          | 1,989                 | 125                  |
| Operating lease liability, current portion (note 12)                                                                                                                                               | 4,591                 | 3,150                |
| Deferred revenue, current portion (note 10)                                                                                                                                                        | 124,468               | 124,116              |
| Accreditation fees payable, current portion                                                                                                                                                        | 802                   | 882                  |
| Income taxes payable                                                                                                                                                                               | 1,642                 | 102                  |
| Other current liabilities                                                                                                                                                                          | 1,950                 | 3,078                |
| Total current liabilities                                                                                                                                                                          | 185,949               | 173,683              |
| Deferred revenue, long-term portion (note 10)                                                                                                                                                      | 22,664                | 23,677               |
| Accreditation fees payable, long-term portion                                                                                                                                                      | 153                   | 170                  |
| Operating lease liability, long-term portion (note 12)                                                                                                                                             | 12,828                | 11,853               |
| Loan payable, long-term portion (note 7)                                                                                                                                                           | 238,840               | 190,748              |
| Redeemable Preferred Shares (note 18)                                                                                                                                                              | 60,516                | -                    |
| Other long-term liability (note 4)                                                                                                                                                                 | -                     | 1,804                |
| Deferred tax liability                                                                                                                                                                             | 18,966                | 22,569               |
| Stockholders' equity (note 14)                                                                                                                                                                     |                       |                      |
| Preferred stock - no par value, 1,250,000 shares authorized; none issued and outstanding                                                                                                           | -                     | -                    |
| Common stock - no par value, 250,000,000 shares authorized; 10,790,630 shares issued and outstanding as of September 30, 2022 and 10,747,417 shares issued and outstanding as of December 31, 2021 | 31,035                | 28,515               |
| Additional paid-in capital                                                                                                                                                                         | 5,448                 | 2,764                |
| Retained earnings                                                                                                                                                                                  | 69,344                | 83,470               |
| Accumulated other comprehensive income (note 5)                                                                                                                                                    | (276)                 | 343                  |
| Total stockholders' equity                                                                                                                                                                         | 105,551               | 115,092              |
| Total liabilities and stockholders' equity                                                                                                                                                         | \$ 645,467            | \$ 539,596           |
| <b>Contingencies (note 19)</b>                                                                                                                                                                     |                       |                      |

See accompanying notes to consolidated financial statements

**Tucows Inc.**  
**Consolidated Statements of Operations and Comprehensive Income**  
(Dollar amounts in thousands of U.S. dollars, except per share amounts)  
(unaudited)

|                                                                                                                                                                                                                                                        | For the Three Months Ended<br>September 30, |                   | For the Nine Months Ended<br>September 30, |                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|-------------------|--------------------------------------------|-------------------|
|                                                                                                                                                                                                                                                        | 2022                                        | 2021              | 2022                                       | 2021              |
| Net revenues (note 10)                                                                                                                                                                                                                                 | \$ 78,050                                   | \$ 75,893         | \$ 242,233                                 | \$ 221,861        |
| Cost of revenues (note 10)                                                                                                                                                                                                                             |                                             |                   |                                            |                   |
| Direct cost of revenues                                                                                                                                                                                                                                | 48,302                                      | 49,540            | 147,023                                    | 144,860           |
| Network, other costs                                                                                                                                                                                                                                   | 4,244                                       | 3,445             | 13,188                                     | 10,295            |
| Network, depreciation of property and equipment                                                                                                                                                                                                        | 7,136                                       | 4,622             | 19,620                                     | 12,344            |
| Network, amortization of intangible assets (note 6)                                                                                                                                                                                                    | 378                                         | 21                | 1,134                                      | 344               |
| Network, impairment of property and equipment                                                                                                                                                                                                          | 3                                           | 241               | 30                                         | 302               |
| Total cost of revenues                                                                                                                                                                                                                                 | <u>60,063</u>                               | <u>57,869</u>     | <u>180,995</u>                             | <u>168,145</u>    |
| Gross profit                                                                                                                                                                                                                                           | 17,987                                      | 18,024            | 61,238                                     | 53,716            |
| Expenses:                                                                                                                                                                                                                                              |                                             |                   |                                            |                   |
| Sales and marketing                                                                                                                                                                                                                                    | 13,894                                      | 9,892             | 39,384                                     | 27,579            |
| Technical operations and development                                                                                                                                                                                                                   | 2,983                                       | 3,742             | 10,212                                     | 10,044            |
| General and administrative                                                                                                                                                                                                                             | 7,897                                       | 5,069             | 22,006                                     | 15,232            |
| Depreciation of property and equipment                                                                                                                                                                                                                 | 149                                         | 136               | 443                                        | 384               |
| Loss on disposition of property and equipment                                                                                                                                                                                                          | (19)                                        | 229               | 461                                        | 234               |
| Amortization of intangible assets (note 6)                                                                                                                                                                                                             | 2,464                                       | 2,267             | 7,394                                      | 6,909             |
| Loss (gain) on currency forward contracts (note 5)                                                                                                                                                                                                     | -                                           | (87)              | -                                          | (277)             |
| Total expenses                                                                                                                                                                                                                                         | <u>27,368</u>                               | <u>21,248</u>     | <u>79,900</u>                              | <u>60,105</u>     |
| Income (Loss) from operations                                                                                                                                                                                                                          | (9,381)                                     | (3,224)           | (18,662)                                   | (6,389)           |
| Other income (expenses):                                                                                                                                                                                                                               |                                             |                   |                                            |                   |
| Interest expense, net                                                                                                                                                                                                                                  | (4,337)                                     | (1,169)           | (8,555)                                    | (3,108)           |
| Gain on sale of Ting customer assets, net (note 17)                                                                                                                                                                                                    | 4,737                                       | 5,564             | 14,009                                     | 15,767            |
| Other expense, net                                                                                                                                                                                                                                     | (27)                                        | (95)              | (128)                                      | (274)             |
| Total other income (expenses)                                                                                                                                                                                                                          | <u>373</u>                                  | <u>4,300</u>      | <u>5,326</u>                               | <u>12,385</u>     |
| Income (Loss) before provision for income taxes                                                                                                                                                                                                        | (9,008)                                     | 1,076             | (13,336)                                   | 5,996             |
| Provision for income taxes (note 8)                                                                                                                                                                                                                    | (1,027)                                     | (299)             | 790                                        | 665               |
| Net income for the period                                                                                                                                                                                                                              | (7,981)                                     | 1,375             | (14,126)                                   | 5,331             |
| Other comprehensive income, net of tax                                                                                                                                                                                                                 |                                             |                   |                                            |                   |
| Unrealized income (loss) on hedging activities (note 5)                                                                                                                                                                                                | (1,674)                                     | (501)             | (510)                                      | 115               |
| Net amount reclassified to earnings (note 5)                                                                                                                                                                                                           | (100)                                       | (884)             | (109)                                      | (2,739)           |
| Other comprehensive income net of tax expense (recovery) of (\$566) and (\$419) for the three months ended September 30, 2022 and September 30, 2021, (\$197) and (\$794) for the nine months ended September 30, 2022 and September 30, 2021 (note 5) | (1,774)                                     | (1,385)           | (619)                                      | (2,624)           |
| Comprehensive income, net of tax for the period                                                                                                                                                                                                        | <u>\$ (9,755)</u>                           | <u>\$ (10)</u>    | <u>\$ (14,745)</u>                         | <u>\$ 2,707</u>   |
| Basic earnings/(loss) per common share (note 9)                                                                                                                                                                                                        | <u>\$ (0.74)</u>                            | <u>\$ 0.13</u>    | <u>\$ (1.31)</u>                           | <u>\$ 0.50</u>    |
| Shares used in computing basic earnings per common share (note 9)                                                                                                                                                                                      | <u>10,779,348</u>                           | <u>10,679,309</u> | <u>10,766,657</u>                          | <u>10,643,798</u> |
| Diluted earnings/(loss) per common share (note 9)                                                                                                                                                                                                      | <u>\$ (0.74)</u>                            | <u>\$ 0.13</u>    | <u>\$ (1.31)</u>                           | <u>\$ 0.49</u>    |
| Shares used in computing diluted earnings per common share (note 9)                                                                                                                                                                                    | <u>10,779,348</u>                           | <u>10,819,716</u> | <u>10,766,657</u>                          | <u>10,800,361</u> |

See accompanying notes to consolidated financial statements

**Tucows Inc.**  
**Consolidated Statements of Cash Flows**  
(Dollar amounts in thousands of U.S. dollars)  
(unaudited)

|                                                                            | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended<br>September 30, |          |
|----------------------------------------------------------------------------|---------------------------------------------|----------|--------------------------------------------|----------|
|                                                                            | 2022                                        | 2021     | 2022                                       | 2021     |
| Cash provided by:                                                          |                                             |          |                                            |          |
| Operating activities:                                                      |                                             |          |                                            |          |
| Net income/(loss) for the period                                           | \$ (7,981)                                  | \$ 1,375 | \$ (14,126)                                | \$ 5,331 |
| Items not involving cash:                                                  |                                             |          |                                            |          |
| Depreciation of property and equipment                                     | 7,285                                       | 4,758    | 20,063                                     | 12,728   |
| Impairment of property and equipment                                       | 3                                           | 241      | 30                                         | 302      |
| Amortization of debt discount and issuance costs                           | 215                                         | 68       | 482                                        | 202      |
| Amortization of intangible assets                                          | 2,842                                       | 2,288    | 8,528                                      | 7,253    |
| Net amortization contract costs                                            | (136)                                       | (189)    | (608)                                      | (444)    |
| Accretion of contingent consideration                                      | 50                                          | 96       | 198                                        | 287      |
| Deferred income taxes (recovery)                                           | (1,658)                                     | (488)    | (3,397)                                    | (1,368)  |
| Excess tax benefits on share-based compensation expense                    | (103)                                       | (323)    | (158)                                      | (868)    |
| Net Right of use operating assets/Operating lease liability                | (715)                                       | (2,378)  | (771)                                      | (2,149)  |
| Loss on disposal of domain names                                           | -                                           | -        | 2                                          | 1        |
| Accretion of redeemable preferred shares                                   | 1,250                                       | -        | 1,250                                      | -        |
| Loss (gain) on change in the fair value of forward contracts               | (135)                                       | 249      | (135)                                      | 606      |
| Amortization of discontinued cash flow hedge from Accumulated other income | (254)                                       | -        | (254)                                      | -        |
| Stock-based compensation                                                   | 1,569                                       | 1,126    | 4,396                                      | 3,357    |
| Change in non-cash operating working capital:                              |                                             |          |                                            |          |
| Accounts receivable                                                        | (1,192)                                     | (11)     | (139)                                      | 718      |
| Contract assets                                                            | 892                                         | (2,783)  | (7,284)                                    | (2,783)  |
| Inventory                                                                  | (1,092)                                     | (275)    | (2,611)                                    | (1,236)  |
| Prepaid expenses and deposits                                              | 684                                         | 918      | 2,359                                      | (1,874)  |
| Deferred costs of fulfillment                                              | 1,915                                       | 1,442    | 785                                        | (2,130)  |
| Income taxes recoverable                                                   | 859                                         | 532      | 2,426                                      | (2,502)  |
| Accounts payable                                                           | 791                                         | 271      | 6,949                                      | 2,289    |
| Accrued liabilities                                                        | (491)                                       | (1,828)  | 1,954                                      | 1,941    |
| Customer deposits                                                          | (2,528)                                     | (673)    | (2,201)                                    | (263)    |
| Deferred revenue                                                           | (3,050)                                     | (2,873)  | (666)                                      | (258)    |
| Accreditation fees payable                                                 | (28)                                        | (51)     | (97)                                       | (45)     |
| Net cash provided by (used in) operating activities                        | (1,008)                                     | 1,492    | 16,975                                     | 19,095   |
| Financing activities:                                                      |                                             |          |                                            |          |
| Proceeds received on exercise of stock options                             | 237                                         | 1,368    | 808                                        | 2,844    |
| Proceeds from redeemable preferred shares                                  | 60,000                                      | -        | 60,000                                     | -        |
| Deferred Preferred Financing Costs                                         | (754)                                       | -        | (754)                                      | -        |
| Payment of tax obligations resulting from net exercise of stock options    | -                                           | (89)     | -                                          | (387)    |
| Contingent consideration for acquisitions                                  | -                                           | -        | (3,125)                                    | -        |
| Proceeds received on loan payable                                          | 12,600                                      | 10,000   | 48,300                                     | 28,000   |
| Payment of loan payable costs                                              | (403)                                       | -        | (668)                                      | -        |
| Net cash (used in) provided by financing activities                        | 71,680                                      | 11,279   | 104,561                                    | 30,457   |
| Investing activities:                                                      |                                             |          |                                            |          |
| Additions to property and equipment                                        | (46,676)                                    | (14,488) | (100,018)                                  | (50,093) |
| Investment in securities                                                   | -                                           | -        | -                                          | (2,012)  |
| Acquisition of intangible assets                                           | -                                           | (6)      | (117)                                      | (223)    |
| Net cash used in investing activities                                      | (46,676)                                    | (14,494) | (100,135)                                  | (52,328) |
| Increase (decrease) in cash and cash equivalents                           | 23,996                                      | (1,723)  | 21,401                                     | (2,776)  |
| Cash and cash equivalents, beginning of period                             | 6,510                                       | 7,258    | 9,105                                      | 8,311    |
| Cash and cash equivalents, end of period                                   | \$ 30,506                                   | \$ 5,535 | \$ 30,506                                  | \$ 5,535 |
| Supplemental cash flow information:                                        |                                             |          |                                            |          |
| Interest paid                                                              | \$ 3,005                                    | \$ 1,144 | \$ 6,891                                   | \$ 3,083 |
| Income taxes paid, net                                                     | \$ 472                                      | \$ 212   | \$ 2,759                                   | \$ 6,008 |
| Supplementary disclosure of non-cash investing and financing activities:   |                                             |          |                                            |          |
| Property and equipment acquired during the period not yet paid for         | \$ 1,671                                    | \$ 1,772 | \$ 1,671                                   | \$ 1,772 |

See accompanying notes to consolidated financial statements

## NOTES TO CONSOLIDATED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

### 1. Organization of the Company:

Tucows Inc. (referred to throughout this report as the “Company”, “Tucows”, “we”, “us” or through similar expressions) provides simple useful services that help people unlock the power of the Internet. The Company provides US consumers and small businesses with high-speed fixed Internet access in selected towns. The Company also offers platform services which provide solutions to support Communication Service Providers (“CSPs”) including subscription and billing management, network orchestration and provisioning, individual developer tools, and other professional services. The Company is also a global distributor of Internet services, including domain name registration, digital certificates, and email. It provides these services primarily through a global Internet-based distribution network of Internet Service Providers, web hosting companies and other providers of Internet services to end-users.

### 2. Basis of Presentation:

The accompanying unaudited interim consolidated balance sheets, and the related consolidated statements of operations and comprehensive income and cash flows reflect all adjustments, consisting of normal recurring adjustments, that are, in the opinion of management, necessary for a fair presentation of the financial position of Tucows and its subsidiaries as at September 30, 2022 and the results of operations and cash flows for the interim periods ended September 30, 2022 and 2021. The results of operations presented in this Quarterly Report on Form 10-Q are not necessarily indicative of the results of operations that may be expected for future periods.

The accompanying unaudited interim consolidated financial statements have been prepared by Tucows in accordance with the rules and regulations of the United States Securities and Exchange Commission (the “SEC”). Certain information and footnote disclosures normally included in the Company's annual audited consolidated financial statements and accompanying notes have been condensed or omitted. Other than the exception noted below, these interim consolidated financial statements and accompanying notes follow the same accounting policies and methods of application used in the annual financial statements and should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended December 31, 2021 included in Tucows' 2021 Annual Report on Form 10-K filed with the SEC on March 1, 2022 (the “2021 Annual Report”). There have been no material changes to our significant accounting policies and estimates during the three and nine months ended September 30, 2022 as compared to the significant accounting policies and estimates described in our 2021 Annual Report, except as described in Note 13 - Segment Reporting and Note 18 - Redeemable Preferred Shares.

### 3. Recent Accounting Pronouncements:

#### *Recent Accounting Pronouncements Not Yet Adopted*

None.

### 4. Acquisitions:

On October 1, 2021, the Company acquired the domain registry related assets of UNR Corp., UNR Inc. and Uni Naming and Registry Ltd. (each a seller and collectively “UNR”). For more information, see Note 3 - Acquisitions of the 2021 Annual Report.

On November 8, 2021, the Company acquired 100% of Simply Bits, LLC via an Agreement and Plan of Merger with one of our wholly owned subsidiaries. For more information, see Note 3 - Acquisitions of the 2021 Annual Report.

### 5. Derivative Instruments and Hedging Activities:

The Company is exposed to certain risks relating to its ongoing business operations. The primary risks managed by using derivative instruments are foreign exchange rate risk and interest rate risk.

Since October 2012, the Company has employed a hedging program with a Canadian chartered bank to limit the potential foreign exchange fluctuations incurred on its future cash flows related to a portion of payroll, taxes, rent and payments to Canadian domain name registry suppliers that are denominated in Canadian dollars and are expected to be paid by its Canadian operating subsidiary. In May 2020, the Company entered into a pay-fixed, receive-variable interest rate swap with a Canadian chartered bank to limit the potential interest rate fluctuations incurred on its future cash flows related to variable interest payments on the Second Amended 2019 Credit Facility. The notional value of the interest rate swap was \$70 million.

The Company does not use hedging forward contracts for trading or speculative purposes. The foreign exchange contracts typically mature between one and twelve months, and the interest rate swap matures in June 2023.

The Company has designated certain of these foreign exchange transactions as cash flow hedges of forecasted transactions under ASU 2017-12, *Derivatives and Hedging* (Topic 815) ("ASC Topic 815"). For certain contracts, as the critical terms of the hedging instrument, and of the entire hedged forecasted transaction, are the same, in accordance with ASC Topic 815, the Company has been able to conclude that changes in fair value and cash flows attributable to the risk of being hedged are expected to completely offset at inception and on an ongoing basis. The Company has also designated the interest rate swap as a cash flow hedge of expected future interest payments. Accordingly, for the foreign exchange, unrealized gains or losses on the effective portion of these contracts have been included within other comprehensive income and reclassified to earnings when the hedged transaction is recognized in earnings. Cash flows from hedging activities are classified under the same category as the cash flows from the hedged items in the consolidated statements of cash flows. The fair value of the contracts, as of September 30, 2022 and December 31, 2021, is recorded as derivative instrument assets or liabilities. For certain contracts where the hedged transactions are no longer probable to occur, the loss on the associated forward contract is recognized in earnings.

During the third quarter of fiscal year 2022, the Company elected to discontinue its application of hedge accounting to its interest rate swaps prospectively. The derivatives continue to be carried at fair value in the accompanying Consolidated Balance Sheets with changes in their fair value from the date of discontinuance recognized in current period earnings in Interest expense, net in the Consolidated Statements of Operations and Comprehensive Income. Amounts previously accumulated in Accumulated other comprehensive income prior to discontinuance will continue to be realized over the remaining term of the underlying forecasted interest payments as a component of Accumulated other comprehensive income in Stockholders' equity and the amounts in AOCI as of the date of the hedge discontinuance will be recorded into interest expense over the original term of the hedged debt. Prior to the discontinuance, for the interest rate swap contracts, unrealized gains or losses on the effective portion of these contracts had been included within other comprehensive income and reclassified to earnings when the hedged transaction is recognized in earnings.

As of September 30, 2022, the notional amount of forward contracts that the Company held to sell U.S. dollars in exchange for Canadian dollars was \$64.6 million, of which \$64.6 million met the requirements of ASC Topic 815 and were designated as hedges.

As of December 31, 2021, the notional amount of forward contracts that the Company held to sell U.S. dollars in exchange for Canadian dollars was \$25.2 million, of which \$25.2 million met the requirements of ASC Topic 815 and were designated as hedges.

As of September 30, 2022, we had the following outstanding forward contracts to trade U.S. dollars in exchange for Canadian dollars:

| <b>Maturity date (Dollar amounts in thousands of U.S. dollars)</b> | <b>Notional amount of U.S. dollars</b> | <b>Weighted average exchange rate of U.S. dollars</b> | <b>Fair value Asset</b> |
|--------------------------------------------------------------------|----------------------------------------|-------------------------------------------------------|-------------------------|
| October - December 2022                                            | \$ 14,897                              | 1.2906                                                | \$ (971)                |
| January - March 2023                                               | 15,132                                 | 1.3283                                                | (552)                   |
| April - June 2023                                                  | 13,074                                 | 1.3385                                                | (364)                   |
| July - September 2023                                              | 11,332                                 | 1.3633                                                | (102)                   |
| October - December 2023                                            | 10,150                                 | 1.3744                                                | -                       |
|                                                                    | <u>\$ 64,585</u>                       | <u>1.3351</u>                                         | <u>\$ (1,989)</u>       |

*Fair value of derivative instruments and effect of derivative instruments on financial performance*

The effect of these derivative instruments on our consolidated financial statements were as follows (amounts presented do not include any income tax effects).

*Fair value of derivative instruments in the consolidated balance sheets*

| <b>Derivatives (Dollar amounts in thousands of U.S. dollars)</b>        | <b>Balance Sheet Location</b> | <b>As of September 30, 2022 Fair Value Asset</b> | <b>As of December 31, 2021 Fair Value Asset</b> |
|-------------------------------------------------------------------------|-------------------------------|--------------------------------------------------|-------------------------------------------------|
| Foreign Currency forward contracts designated as cash flow hedges (net) | Derivative instruments        | \$ (1,989)                                       | \$ 62                                           |
| Interest rate swap contract discontinued as a cash flow hedge (net)     | Derivative instruments        | 2,015                                            | \$ 390                                          |
| Total foreign currency and interest swap forward contracts (net)        | Derivative instruments        | \$ 26                                            | \$ 452                                          |

*Movement in accumulated other comprehensive income (AOCI) balance for the three months ended September 30, 2022 (Dollar amounts in thousands of U.S. dollars)*

|                                                                                 | <b>Gains and losses on cash flow hedges</b> | <b>Tax impact</b> | <b>Total AOCI</b> |
|---------------------------------------------------------------------------------|---------------------------------------------|-------------------|-------------------|
| Opening AOCI balance - June 30, 2022                                            | \$ 1,974                                    | \$ (476)          | \$ 1,498          |
| Other comprehensive income (loss) before reclassifications                      | (2,209)                                     | 535               | (1,674)           |
| Amount reclassified from AOCI                                                   | 123                                         | (30)              | 93                |
| Amortization of discontinued cash flow hedge                                    | (254)                                       | 61                | (193)             |
| Other comprehensive income (loss) for the three months ended September 30, 2022 | (2,340)                                     | 566               | (1,774)           |
| Ending AOCI Balance - September 30, 2022                                        | <u>\$ (366)</u>                             | <u>\$ 90</u>      | <u>\$ (276)</u>   |

Movement in accumulated other comprehensive income (AOCI) balance for the nine months ended September 30, 2022 (Dollar amounts in thousands of U.S. dollars)

|                                                                                | Gains and losses on<br>cash flow hedges | Tax impact | Total AOCI |
|--------------------------------------------------------------------------------|-----------------------------------------|------------|------------|
| Opening AOCI balance - December 31, 2021                                       | \$ 450                                  | \$ (107)   | \$ 343     |
| Other comprehensive income (loss) before reclassifications                     | (673)                                   | 163        | (510)      |
| Amount reclassified from AOCI                                                  | 111                                     | (27)       | 84         |
| Amortization of discontinued cash flow hedge                                   | (254)                                   | 61         | (193)      |
| Other comprehensive income (loss) for the nine months ended September 30, 2022 | (816)                                   | 197        | (619)      |
| Ending AOCI Balance - September 30, 2022                                       | \$ (366)                                | \$ 90      | \$ (276)   |

Effects of derivative instruments on income and other comprehensive income (OCI) for the three months ended September 30, 2022 and 2021 are as follows (Dollar amounts in thousands of U.S. dollars)

| Derivatives in Cash Flow Hedging Relationship                                    | Amount of Gain or<br>(Loss) Recognized in<br>OCI, net of tax, on<br>Derivative | Location of Gain or<br>(Loss) Reclassified<br>from AOCI into<br>Income | Amount of Gain or<br>(Loss) Reclassified<br>from AOCI into<br>Income |
|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------|
| Foreign currency forward contracts for the three months ended September 30, 2022 | \$ (1,666)                                                                     | Operating expenses<br>Cost of revenues                                 | \$ (97)<br>\$ (26)                                                   |
| Interest rate swap contract for the three months ended September 30, 2022        | \$ (8)                                                                         | Interest expense,<br>net                                               | \$ 254                                                               |
| Foreign currency forward contracts for the three months ended September 30, 2021 | \$ (466)                                                                       | Operating expenses<br>Cost of revenues                                 | \$ 967<br>\$ 219                                                     |
| Interest rate swap contract for the three months ended September 30, 2021        | \$ (35)                                                                        | Interest expense,<br>net                                               | \$ (36)                                                              |

Effects of derivative instruments on income and other comprehensive income (OCI) for the nine months ended September 30, 2022 and 2021 are as follows (Dollar amounts in thousands of U.S. dollars)

| Derivatives in Cash Flow Hedging Relationship                                   | Amount of Gain or<br>(Loss) Recognized in<br>OCI, net of tax, on<br>Derivative | Location of Gain or<br>(Loss) Reclassified<br>from AOCI into<br>Income | Amount of Gain or<br>(Loss) Reclassified<br>from AOCI into<br>Income |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------|
| Foreign currency forward contracts for the nine months ended September 30, 2022 | \$ (1,941)                                                                     | Operating expenses<br>Cost of revenues                                 | \$ (145)<br>\$ (35)                                                  |
| Interest rate swap contract for the nine months ended September 30, 2022        | \$ 1,431                                                                       | Interest expense,<br>net                                               | \$ 323                                                               |
| Foreign currency forward contracts for the nine months ended September 30, 2021 | \$ 42                                                                          | Operating expenses<br>Cost of revenues                                 | \$ 3,004<br>\$ 643                                                   |
| Interest rate swap contract for the nine months ended September 30, 2021        | \$ 73                                                                          | Interest expense,<br>net                                               | \$ (81)                                                              |

For those foreign currency forward contracts not designated as hedges, the Company recorded the following fair value adjustments on settled and outstanding contracts (Dollar amounts in thousands of U.S. dollars):

| Forward currency contracts not designated as hedges: | Three Months Ended September 30, |          | Nine Months Ended September 30, |          |
|------------------------------------------------------|----------------------------------|----------|---------------------------------|----------|
|                                                      | 2022                             | 2021     | 2022                            | 2021     |
| Gain (loss) on settlement                            | \$ -                             | \$ 336   | \$ -                            | \$ 883   |
| Gain (loss) on change in fair value                  | \$ -                             | \$ (249) | \$ -                            | \$ (606) |
|                                                      | -                                | 87       | -                               | 277      |

For those interest rate swap contracts not designated as hedges, the Company recorded the following fair value adjustments on settled and outstanding contracts (Dollar amounts in thousands of U.S. dollars):

| Interest rate swap contracts not designated as hedges: | Three Months Ended September 30, |      | Nine Months Ended September 30, |      |
|--------------------------------------------------------|----------------------------------|------|---------------------------------|------|
|                                                        | 2022                             | 2021 | 2022                            | 2021 |
| Gain (loss) on matured swaps                           | \$ 254                           | \$ - | \$ 254                          | \$ - |
| Gain (loss) on change in fair value on unsettled swaps | \$ 136                           | \$ - | \$ 136                          | \$ - |
|                                                        | 390                              | -    | 390                             | -    |



## 6. Goodwill and Other Intangible Assets:

### Goodwill:

Goodwill represents the excess of the purchase price over the fair value of tangible and identifiable intangible assets acquired and liabilities assumed in our acquisitions.

The Company's Goodwill balance is \$130.4 million as of September 30, 2022 and \$130.4 million as of December 31, 2021. The Company's goodwill relates 83% (\$107.7 million) to the Tucows Domains operating segment, 17% (\$22.7 million) to the Ting operating segment and nil to the Wavelo operating segment.

Goodwill is not amortized, but is subject to an annual impairment test, or more frequently if impairment indicators are present. No impairment was recognized during the three and nine months ended September 30, 2022 and 2021.

### Other Intangible Assets:

Intangible assets consist of acquired brand, technology, customer relationships, surname domain names, direct navigation domain names and network rights. The Company considers its intangible assets consisting of surname domain names and direct navigation domain names as indefinite life intangible assets. The Company has the exclusive right to these domain names as long as the annual renewal fees are paid to the applicable registry. Renewals occur routinely and at a nominal cost. The indefinite life intangible assets are not amortized but are subject to impairment assessments performed throughout the year. As part of the normal renewal evaluation process during the periods ended September 30, 2022 and September 30, 2021, the Company assessed that all domain names that were originally acquired in the June 2006 acquisition of Mailbank.com Inc. that were up for renewal, should be renewed.

Intangible assets, comprising brand, technology, customer relationships and network rights are being amortized on a straight-line basis over periods of two to fifteen years.

Net book value of acquired intangible assets consist of the following (Dollar amounts in thousands of U.S. dollars):

|                                       | Surname<br>domain<br>names<br>indefinite<br>life | Direct<br>navigation<br>domain<br>names<br>indefinite<br>life | Brand<br>7 years | Customer<br>relationships<br>3 - 7 years | Technology<br>2 - 7 years | Network<br>rights<br>15 years | Total            |
|---------------------------------------|--------------------------------------------------|---------------------------------------------------------------|------------------|------------------------------------------|---------------------------|-------------------------------|------------------|
| <b>Amortization period</b>            |                                                  |                                                               |                  |                                          |                           |                               |                  |
| Balances, June 30, 2022               | \$ 11,156                                        | \$ 1,133                                                      | \$ 3,974         | \$ 24,461                                | \$ 3,082                  | \$ 1,032                      | \$ 44,838        |
| Acquisition of customer relationships | -                                                | -                                                             | -                | -                                        | -                         | -                             | -                |
| Amortization expense                  | -                                                | -                                                             | (518)            | (2,143)                                  | (156)                     | (25)                          | (2,842)          |
| Balances, September 30, 2022          | <u>\$ 11,156</u>                                 | <u>\$ 1,133</u>                                               | <u>\$ 3,456</u>  | <u>\$ 22,318</u>                         | <u>\$ 2,926</u>           | <u>\$ 1,007</u>               | <u>\$ 41,996</u> |

|                                                     | Surname<br>domain<br>names<br>indefinite<br>life | Direct<br>navigation<br>domain<br>names<br>indefinite<br>life | Brand<br>7 years | Customer<br>relationships<br>3 - 7 years | Technology<br>2 - 7 years | Network<br>rights<br>15 years | Total            |
|-----------------------------------------------------|--------------------------------------------------|---------------------------------------------------------------|------------------|------------------------------------------|---------------------------|-------------------------------|------------------|
| <b>Amortization period</b>                          |                                                  |                                                               |                  |                                          |                           |                               |                  |
| Balances, December 31, 2021                         | \$ 11,156                                        | \$ 1,135                                                      | \$ 5,010         | \$ 28,634                                | \$ 3,392                  | \$ 1,082                      | \$ 50,409        |
| Acquisition of customer relationships               | -                                                | -                                                             | -                | 117                                      | -                         | -                             | 117              |
| Additions to/(disposals from) domain portfolio, net | -                                                | (2)                                                           | -                | -                                        | -                         | -                             | (2)              |
| Amortization expense                                | -                                                | -                                                             | (1,554)          | (6,433)                                  | (466)                     | (75)                          | (8,528)          |
| Balances, September 30, 2022                        | <u>\$ 11,156</u>                                 | <u>\$ 1,133</u>                                               | <u>\$ 3,456</u>  | <u>\$ 22,318</u>                         | <u>\$ 2,926</u>           | <u>\$ 1,007</u>               | <u>\$ 41,996</u> |

The following table shows the estimated amortization expense for each of the next 5 years and thereafter, assuming no further additions to acquired intangible assets are made (Dollar amounts in thousands of U.S. dollars):

|                   | Year ending<br>December 31, |
|-------------------|-----------------------------|
| Remainder of 2022 | \$ 2,739                    |
| 2023              | 10,102                      |
| 2024              | 6,542                       |
| 2025              | 4,398                       |
| 2026              | 2,665                       |
| Thereafter        | 3,261                       |
| Total             | <u>\$ 29,707</u>            |

## 7. Loan Payable:

### *Amended 2019 Credit Facility*

On June 14, 2019, the Company and its wholly-owned subsidiaries, Tucows.com Co., Ting Fiber, Inc., Ting Inc., Tucows (Delaware) Inc. and Tucows (Emerald), LLC entered into an Amended and Restated Senior Secured Credit Agreement (the “Amended 2019 Credit Facility”) with Royal Bank (“RBC”), as administrative agent, and lenders party thereto (collectively with RBC, the “Lenders”) under which the Company had access to an aggregate of up to \$240 million in funds, which consisted of \$180 million guaranteed credit facility and a \$60 million accordion facility. The Amended 2019 Credit Facility replaced the Company’s 2017 Amended Credit Facility.

In connection with the Amended 2019 Credit Facility, the Company incurred \$0.3 million of fees paid to the Lenders and \$0.2 million of legal fees related to the debt issuance. Of these fees, \$0.4 million are debt issuance costs, which have been reflected as a reduction to the carrying amount of the loan payable and will be amortized over the term of the credit facility agreement and \$0.1 million were recorded in General and administrative expenses for the year ended December 31, 2019.

The obligations of the Company under the Amended 2019 Credit Agreement are secured by a first priority lien on substantially all of the personal property and assets of the Company and has a four-year term, maturing on June 13, 2024.

### *Second Amended 2019 Credit Facility*

On October 26, 2021, the Company entered into a Second Amended and Restated Senior Secured Credit Agreement (the “Second Amended 2019 Credit Agreement”) with the Lenders and Toronto-Dominion Bank (collectively the “New Lenders”) to, among other things, increase the existing revolving credit facility from \$180 million to \$240 million. The Second Amended Credit Agreement provides the Company with access to an aggregate of \$240 million in committed funds. The Second Amended Credit Agreement also provides for two additional interest rate tiers if the Company exceeds a 3.50x Total Funded Debt to Adjusted EBITDA Ratio.

In connection with the Second Amended 2019 Credit Facility, the Company incurred \$0.3 million of fees related to the debt issuance, which have been reflected as a reduction to the carrying amount of the loan payable and will be amortized over the term of the credit facility agreement.

### *Third Amended 2019 Credit Facility*

On August 8, 2022, the Company entered into a Third Amended and Restated Senior Secured Credit Agreement (the “Amended Credit Agreement”) with its existing syndicate of lenders (the Lenders). The Amended Credit Agreement continues to provide the Company with access to an aggregate of \$240 million in committed funds (the Credit Facility). Under the Amended Credit Agreement, and in connection with the Unit Purchase Agreement (as defined in Note 18 - Redeemable preferred shares), the Lenders agreed that Ting Fiber Inc. (converted to Ting LLC) and its wholly owned subsidiaries ceased to be Guarantors under the Credit Facility and shall automatically be released from the respective guarantee and security documents, including a release of the Lenders' security interests and liens upon the assets of such entities. Additionally, the Amended Credit Agreement has extended the maturity of the Credit Facility to June 14, 2024. The Company is subject to the following financial covenants at all times, which are to be calculated on a rolling four quarter basis: (i) maximum Total Funded Debt to Adjusted EBITDA Ratio of 4.00:1.00 until September 29, 2023 and 3.75:1.00 thereafter; and (ii) minimum Interest Coverage Ratio of 3.00:1.00. The financial covenant calculations will exclude the financial results of Ting Fiber Inc. (converted to Ting LLC) and its wholly owned subsidiaries. The Amended Credit Agreement also requires the Company to comply with other customary terms and conditions. The Amended Credit Agreement added SOFR Loans as a form of advance available under the Credit Facility to replace LIBOR Rate Advances, and such SOFR Loans may bear interest based on Adjusted Daily Simple SOFR (defined to be the applicable SOFR rate published by the Federal Reserve bank of New York plus 0.10% per annum subject to a floor of zero) or Adjusted Term SOFR (defined to be the applicable SOFR rate published by CME Group Benchmark Administration Limited plus 0.10% for one-month, 0.15% for three-months, and 0.25% for six-months per annum).

### *Credit Facility Terms*

The Credit Facility is revolving with interest only payments with no scheduled repayments during the term.

The Amended Credit Facility Agreement contains customary representations and warranties, affirmative and negative covenants, and events of default. The Amended Credit Agreement was entered into in August 2022 which requires the Company to comply with the following financial covenants at all times, which are to be calculated on a rolling four quarter basis: (i) maximum Total Funded Debt to Adjusted EBITDA Ratio of 4.00:1.00 until September 29, 2023; (ii) 3.75:1.00 thereafter and; (iii) minimum Interest Coverage Ratio of 3.00:1.00. During the three and nine months ended September 30, 2022, and the three and nine months ended September 30, 2021 the Company was in compliance with these covenants. The Amended Credit Agreement definition of Adjusted EBITDA which is used to calculate the Company's compliance with covenants was previously amended in March of 2022 to align to the definition of Adjusted EBITDA used in Note 13 – Segment Accounting.

Borrowings under the Amended Credit Agreement will accrue interest and standby fees based on the Company’s Total Funded Debt to Adjusted EBITDA ratio and the availability type as follows:

| Availability type or fee                                                                                     | If Total Funded Debt to EBITDA is: |                                                  |                                                  |                                                  |                                                  |                               |
|--------------------------------------------------------------------------------------------------------------|------------------------------------|--------------------------------------------------|--------------------------------------------------|--------------------------------------------------|--------------------------------------------------|-------------------------------|
|                                                                                                              | Less than 1.75                     | Greater than or equal to 1.75 and less than 2.25 | Greater than or equal to 2.25 and less than 2.75 | Greater than or equal to 2.75 and less than 3.25 | Greater than or equal to 3.25 and less than 3.75 | Greater than or equal to 3.75 |
| Canadian dollar borrowings based on Bankers’ Acceptance or U.S. dollar borrowings based on SOFR (Margin)     | 1.50%                              | 1.75%                                            | 2.25%                                            | 2.50%                                            | 2.75%                                            | 3.00%                         |
| Canadian or U.S. dollar borrowings based on Prime Rate or U.S. dollar borrowings based on Base Rate (Margin) | 0.25%                              | 0.50%                                            | 1.0%                                             | 1.25%                                            | 1.50%                                            | 1.75%                         |
| Standby fees                                                                                                 | 0.30%                              | 0.35%                                            | 0.45%                                            | 0.50%                                            | 0.55%                                            | 0.60%                         |

The following table summarizes the Company's borrowings under the credit facilities (Dollar amounts in thousands of U.S. dollars):

|                                                    | <u>September 30, 2022</u> | <u>December 31, 2021</u> |
|----------------------------------------------------|---------------------------|--------------------------|
| Revolver                                           | \$ 239,700                | \$ 191,400               |
| Less: unamortized debt discount and issuance costs | (860)                     | (652)                    |
| Total loan payable                                 | 238,840                   | 190,748                  |
| Less: loan payable, current portion                | -                         | -                        |
| Loan payable, long-term portion                    | \$ 238,840                | \$ 190,748               |

The following table summarizes our scheduled principal repayments as of September 30, 2022 (Dollar amounts in thousands of U.S. dollars):

|                   |                   |
|-------------------|-------------------|
| Remainder of 2022 | \$ -              |
| 2023              | -                 |
| 2024              | 239,700           |
|                   | <u>\$ 239,700</u> |

## 8. Income Taxes:

The Company's provision for income taxes for interim periods is determined by using an estimated annual effective tax rate, adjusted for discrete items arising during the quarter. At each quarter, the Company updates the estimated annual effective tax rate and makes a year-to-date adjustment to the provision. The estimated annual effective tax rate is subject to volatility due to several factors, including accurately forecasting the Company's net income before tax and taxable income or loss and the mix of tax jurisdictions to which they relate, intercompany transactions, and changes in statutes, regulations, and case law.

For the three months ended September 30, 2022, the Company recorded an income tax recovery of \$1.0 million on net loss before income taxes of \$9.0 million, using an estimated effective tax rate for the fiscal year ending December 31, 2022. Our effective tax rates for the three months ended September 30, 2022 differs from the U.S. federal statutory rate primarily due to changes in valuation allowance on foreign tax credit and changes in estimated state tax expense.

For the nine months ended September 30, 2022, the Company recorded an income tax expense of \$0.8 million on net loss before income taxes of (\$13.3) million, using an estimated effective tax rate for the fiscal year ending December 31, 2022. Our effective tax rates for the nine months ended September 30, 2022 differs from the U.S. federal statutory rate primarily due to changes in valuation allowance on foreign tax credit, state tax expense and the impact of foreign earnings.

Comparatively, for the three months ended September 30, 2021, the Company recorded an income tax recovery of \$0.3 million on net income before income taxes of \$1.1 million, using an estimated effective tax rate for the fiscal year ending December 31, 2021 ("Fiscal 2021"). Our income tax recovery includes a \$0.8 million tax recovery related to discrete adjustments resulting from foreign exchange and mark-to-market adjustments as well as the inclusion of a \$0.2 million tax recovery related to ASU No. 2016-09—Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting ("ASU 2016-09"), which requires all excess tax benefits and tax deficiencies related to employee share-based payments to be recognized through income tax expense (recovery).

Comparatively, for the nine months ended September 30, 2021, the Company recorded an income tax expense of \$0.7 million on income before income taxes of \$6.0 million, using an estimated effective tax rate for Fiscal 2021. Our income tax expense includes a \$1.6 million tax recovery related to discrete adjustments resulting from foreign exchange and mark-to-market adjustments as well as the inclusion of a \$0.4 million tax recovery related to ASU 2016-09.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the years in which those temporary differences become deductible. Management considers projected future taxable income, uncertainties related to the industry in which the Company operates, and tax planning strategies in making this assessment.

## 9. Basic and Diluted Earnings per Common Share:

The following table reconciles the numerators and denominators of the basic and diluted earnings per common share computation (Dollar amounts in thousands of US dollars, except for share data):

|                                                              | <u>Three Months Ended September 30,</u> |                   | <u>Nine Months Ended September 30,</u> |                   |
|--------------------------------------------------------------|-----------------------------------------|-------------------|----------------------------------------|-------------------|
|                                                              | <u>2022</u>                             | <u>2021</u>       | <u>2022</u>                            | <u>2021</u>       |
| Numerator for basic and diluted earnings per common share:   |                                         |                   |                                        |                   |
| Net income/(loss) for the period                             | \$ (7,981)                              | \$ 1,375          | \$ (14,126)                            | \$ 5,331          |
| Denominator for basic and diluted earnings per common share: |                                         |                   |                                        |                   |
| Basic weighted average number of common shares outstanding   | 10,779,348                              | 10,679,309        | 10,766,657                             | 10,643,798        |
| Effect of outstanding stock options                          | -                                       | 140,407           | -                                      | 156,563           |
| Diluted weighted average number of shares outstanding        | <u>10,779,348</u>                       | <u>10,819,716</u> | <u>10,766,657</u>                      | <u>10,800,361</u> |
| Basic earnings (loss) per common share                       | <u>\$ (0.74)</u>                        | <u>\$ 0.13</u>    | <u>\$ (1.31)</u>                       | <u>\$ 0.50</u>    |
| Diluted earnings (loss) per common share                     | <u>\$ (0.74)</u>                        | <u>\$ 0.13</u>    | <u>\$ (1.31)</u>                       | <u>\$ 0.49</u>    |

For the three and nine months ended September 30, 2022, the Company recorded a net loss, thus all outstanding options were considered anti-dilutive and excluded from the computation of diluted income per common share.

For the three months ended September 30, 2021 options to purchase 92,470 common shares were not included in the computation of diluted income per common share because the options' exercise price was greater than the average market price of the common shares for the period.

For the nine months ended September 30, 2021, options to purchase 44,150 common shares were not included in the computation of diluted income per common share because the options' exercise price was greater than the average market price of the common shares for the period.

## 10. Revenue:

### *Significant accounting policy*

The Company's revenues are derived from (a) the provisioning of retail fiber Internet services through Ting, (b) the CSP solutions and professional services through Wavelo; and from (c) domain name registration contracts, other domain related value-added services, domain sale contracts, and other advertising revenue through Tucows Domains Services. Certain revenues are disclosed under Tucows Corporate as they are considered non-core business activities including Mobile Retail Services, Transition Services Agreement ("TSA") revenue and eliminations of intercompany revenue. Amounts received in advance of meeting the revenue recognition criteria described below are recorded as deferred revenue. All products are generally sold without the right of return or refund.

Revenue is measured based on consideration specified in a contract with a customer and excludes any sales incentives and amounts collected on behalf of third parties. The Company recognizes revenue when it satisfies a performance obligation by transferring control over a product or service to a customer.

In the third quarter of 2022, the Company renamed its three operating and reportable segments to reflect their branded names: Ting, Wavelo and Tucows Domains, previously called Fiber Internet Services, Platform Services and Domain Services, respectively. There were no changes to the activities or financial results attributed to each segment.

### *Nature of goods and services*

The following is a description of principal activities – separated by reportable segments – from which the Company generates its revenue. For more detailed information about reportable segments, see Note 13 – Segment Reporting.

#### (a) Ting

The Company generates Ting revenues primarily through the provisioning of fixed high-speed Internet access, Ting Internet.

Ting Internet contracts provide customers Internet access at their home or business through the installation and use of our fiber optic network. Ting Internet contracts are generally prepaid and grant customers with unlimited bandwidth based on a fixed price per month basis. Because consideration is collected before the service period, revenue is initially deferred and recognized as the Company performs its obligation to provide Internet access. Though the Company does not consider the installation of fixed Internet access to be a distinct performance obligation, the fees related to installation are immaterial and therefore revenue is recognized as billed.

Ting Internet access services are primarily contracted through the Ting website, for one month at a time and contain no commitment to renew the contract following each customer's monthly billing cycle. The Company's billing cycle for all Ting Internet customers is computed based on the customer's activation date. In addition, revenues associated with the sale of Internet hardware to subscribers are recognized when title and risk of loss is transferred to the subscriber and shipment has occurred. Incentive marketing credits given to customers are recorded as a reduction of revenue.

In those cases, where payment is not received at the time of sale, revenue is not recognized at contract inception unless the collection of the related accounts receivable is reasonably assured. The Company records costs that reflect expected refunds, rebates and credit card charge-backs as a reduction of revenues at the time of the sale based on historical experiences and current expectations.

#### (b) Wavelo

The Company generates Wavelo revenues by providing billing and provisioning platform services to Communication Service Providers ("CSPs") to whom we also provide other professional services.

Platform service agreements contain both platform services and professional services. Platform services offer a variety of solutions that support CSPs, including subscription and billing management, network orchestration and provisioning, and individual developer tools. Consideration under platform service arrangements includes both a variable component that changes each month depending on the number of subscribers hosted on the platform, as well as fixed payments and credits. The Company recognizes variable subscriber fees, in excess of minimums, as the fees are invoiced. Platform services represent a single promise to provide continuous access (i.e. a stand-ready performance obligation) to the platform. As each month of providing access to the platform is substantially the same and the customer simultaneously receives and consumes the benefits as access is provided, the performance obligation is comprised of a series of distinct service periods. Professional services provided under platform service arrangements can include implementation, training, consulting or software development/modification services. Revenues related to professional services are distinct from the other promises in the contract(s) and are recognized as the related services are performed. Consideration is allocated between the platform services and professional services performance obligations by estimating the standalone selling price ("SSP") of each performance obligation. The Company estimates the SSP of professional services based on observable standalone sales. The SSP of platform services is derived using the residual approach by estimating the total contract consideration and subtracting the SSP of professional services. Total contract consideration is estimated at contract inception, considering any constraints that may apply and updating the estimates as new information becomes available.

Other professional services consist of professional service arrangements with platform services customers which are billed based on separate Statement of Work ("SOW") arrangements for bespoke feature development. Revenues for professional services contracted through separate SOWs are recognized at a point-in-time when the final acceptance criteria have been met.

(c) Tucows Domains

Domain registration contracts, which can be purchased for terms of one to ten years, provide our resellers and retail registrant customers with the exclusive right to a personalized internet address from which to build an online presence. The Company enters into domain registration contracts in connection with each new, renewed and transferred-in domain registration. At the inception of the contract, the Company charges and collects the registration fee for the entire registration period. Though fees are collected upfront, revenue from domain registrations are recognized rateably over the registration period as domain registration contracts contain a 'right to access' license of IP, which is a distinct performance obligation measured over time. The registration period begins once the Company has confirmed that the requested domain name has been appropriately recorded in the registry under contractual performance standards.

Domain related value-added services like digital certifications, WHOIS privacy, website hosting and hosted email provide our resellers and retail registrant customers with tools and additional functionality to be used in conjunction with domain registrations. All domain related value-added services are considered distinct performance obligations which transfer the promised service to the customer over the contracted term. Fees charged to customers for domain related value-added services are collected at the inception of the contract, and revenue is recognized on a straight-line basis over the contracted term, consistent with the satisfaction of the performance obligations.

The Company is an ICANN accredited registrar. Thus, the Company is the primary obligor with our reseller and retail registrant customers and is responsible for the fulfillment of our registrar services to those parties. As a result, the Company reports revenue in the amount of the fees we receive directly from our reseller and retail registrant customers. Our reseller customers maintain the primary obligor relationship with their retail customers, establish pricing and retain credit risk to those customers. Accordingly, the Company does not recognize any revenue related to transactions between our reseller customers and their ultimate retail customers.

The Company also sells the rights to the Company's portfolio domains or names acquired through the Company's domain expiry stream. Revenue generated from sale of domain name contracts, containing a distinct performance obligation to transfer the domain name rights under the Company's control, is generally recognized once the rights have been transferred and payment has been received in full.

Advertising revenue is derived through domain parking monetization, whereby the Company contracts with third-party Internet advertising publishers to direct web traffic from the Company's domain expiry stream domains and Internet portfolio domains to advertising websites. Compensation from Internet advertising publishers is calculated variably on a cost-per-action basis based on the number of advertising links that have been visited in a given month. Given that the variable consideration is calculated and paid on a monthly basis, no estimation of variable consideration is required.

*Disaggregation of Revenue*

The following is a summary of the Company's revenue earned from each significant revenue stream (Dollar amounts in thousands of U.S. dollars):

|                                  | <b>Three Months Ended September 30,</b> |                  | <b>Nine Months Ended September 30,</b> |                   |
|----------------------------------|-----------------------------------------|------------------|----------------------------------------|-------------------|
|                                  | <b>2022</b>                             | <b>2021</b>      | <b>2022</b>                            | <b>2021</b>       |
| <b>Ting:</b>                     |                                         |                  |                                        |                   |
| Fiber Internet Services          | \$ 10,946                               | \$ 6,391         | \$ 30,955                              | \$ 17,021         |
| <b>Wavelo:</b>                   |                                         |                  |                                        |                   |
| Platform Services                | 4,048                                   | 3,845            | 18,115                                 | 7,217             |
| Other Professional Services      | -                                       | -                | 1,750                                  | -                 |
| Total Wavelo                     | 4,048                                   | 3,845            | 19,865                                 | 7,217             |
| <b>Tucows Domains</b>            |                                         |                  |                                        |                   |
| Wholesale                        |                                         |                  |                                        |                   |
| Domain Services                  | 46,985                                  | 47,080           | 140,800                                | 141,954           |
| Value Added Services             | 4,883                                   | 4,862            | 16,129                                 | 15,424            |
| Total Wholesale                  | 51,868                                  | 51,942           | 156,929                                | 157,378           |
| Retail                           | 8,413                                   | 8,787            | 25,961                                 | 26,837            |
| Total Tucows Domains             | 60,281                                  | 60,729           | 182,890                                | 184,215           |
| <b>Tucows Corporate:</b>         |                                         |                  |                                        |                   |
| Mobile services and eliminations | 2,775                                   | 4,928            | 8,523                                  | 13,408            |
|                                  | <u>\$ 78,050</u>                        | <u>\$ 75,893</u> | <u>\$ 242,233</u>                      | <u>\$ 221,861</u> |

During the three and nine months ended September 30, 2022 and three and nine months ended September 30, 2021 no one customer accounted for more than 10% of total revenue.

At September 30, 2022, one customer represented 37% of accounts receivables.

The following is a summary of the Company's cost of revenue from each significant revenue stream (Dollar amounts in thousands of U.S. dollars):

|                                                 | <b>Three Months Ended September 30,</b> |             | <b>Nine Months Ended September 30,</b> |             |
|-------------------------------------------------|-----------------------------------------|-------------|----------------------------------------|-------------|
|                                                 | <b>2022</b>                             | <b>2021</b> | <b>2022</b>                            | <b>2021</b> |
| <b>Ting:</b>                                    |                                         |             |                                        |             |
| Fiber Internet Services                         | \$ 4,290                                | \$ 3,632    | \$ 12,746                              | \$ 9,247    |
| <b>Wavelo:</b>                                  |                                         |             |                                        |             |
| Platform Services                               | 235                                     | 140         | 622                                    | 338         |
| Other Professional Services                     | -                                       | -           | 1,632                                  | -           |
| Total Wavelo                                    | 235                                     | 140         | 2,254                                  | 338         |
| <b>Tucows Domains:</b>                          |                                         |             |                                        |             |
| <b>Wholesale</b>                                |                                         |             |                                        |             |
| Domain Services                                 | 37,393                                  | 37,108      | 110,728                                | 110,593     |
| Value Added Services                            | 613                                     | 690         | 1,912                                  | 1,867       |
| Total Wholesale                                 | 38,006                                  | 37,798      | 112,640                                | 112,460     |
| <b>Retail</b>                                   |                                         |             |                                        |             |
| Total Tucows Domains                            | 4,105                                   | 4,455       | 12,383                                 | 13,354      |
|                                                 | 42,111                                  | 42,253      | 125,023                                | 125,814     |
| <b>Tucows Corporate:</b>                        |                                         |             |                                        |             |
| Mobile services and eliminations                | 1,666                                   | 3,515       | 7,000                                  | 9,461       |
| <b>Network Expenses:</b>                        |                                         |             |                                        |             |
| Network, other costs                            | 4,244                                   | 3,445       | 13,188                                 | 10,295      |
| Network, depreciation of property and equipment | 7,136                                   | 4,622       | 19,620                                 | 12,344      |
| Network, amortization of intangible assets      | 378                                     | 21          | 1,134                                  | 344         |
| Network, impairment of property and equipment   | 3                                       | 241         | 30                                     | 302         |
| Total Network Expenses                          | 11,761                                  | 8,329       | 33,972                                 | 23,285      |
|                                                 | \$ 60,063                               | \$ 57,869   | \$ 180,995                             | \$ 168,145  |

#### *Contract Balances*

The following tables provide information about contract assets and contract liabilities (deferred revenue) from contracts with customers. The Company accounts for contract assets and liabilities on a contract-by-contract basis, with each contract presented as either a net contract asset or a net contract liability accordingly.

Some of the Company's long-term contracts with customers are billed in advance of service, such as domain contracts and some professional service contracts. Consideration received from customers related to performance obligations which have not yet been satisfied are contract liabilities and recorded as deferred revenues.

Deferred revenue primarily relates to the portion of the transaction price received in advance related to the unexpired term of domain name registrations and other domain related value-added services, on both a wholesale and retail basis, net of external commissions.

Significant changes in deferred revenue for the nine months ended September 30, 2022 were as follows (Dollar amounts in thousands of U.S. dollars):

Deferred revenue:

|                              | <b>September 30,<br/>2022</b> |
|------------------------------|-------------------------------|
| Balance, beginning of period | \$ 147,793                    |
| Deferred revenue             | 183,300                       |
| Recognized revenue           | (183,961)                     |
| Balance, end of period       | <u>\$ 147,132</u>             |

The Company receives consideration for long-term mobile platform service contracts, which we collect variably each month depending on the number of subscribers hosted on the platform (subject to certain minimums) as well as through certain fixed platform fees and credits. Contract assets are recorded for services delivered under long-term mobile platform services contracts, to the extent that the services delivered exceed the services which have been billed to the customer at the reporting date. Contract assets are transferred to receivables when the rights to consideration become unconditional. All contract assets transfer to receivables within three months of when they are recognized. Significant changes in the contract assets for the nine months ended September 30, 2022 were as follows (Dollar amounts in thousands of U.S. dollars):

Contract assets:

|                                     | <b>September 30,<br/>2022</b> |
|-------------------------------------|-------------------------------|
| Balance, beginning of period        | \$ 778                        |
| Consideration recognized as revenue | 16,812                        |
| Transferred to receivables          | (9,528)                       |
| Balance, end of period              | <u>\$ 8,062</u>               |

#### *Remaining Performance Obligations:*

For retail mobile and internet access services, where the performance obligation is part of contracts that have an original expected duration of one year or less (typically one month), the Company has elected to apply a practical expedient to not disclose revenues expected to be recognized in the future related performance obligations that are unsatisfied (or partially unsatisfied).

Although domain registration contracts are deferred over the lives of the individual contracts, which can range from one to ten years, approximately 80 percent of our deferred revenue balance related to domain contracts is expected to be recognized within the next twelve months.

Deferred revenue related to Exact hosting contracts is also deferred over the lives of the individual contracts, which are expected to be fully recognized within the next twelve months.

Professional service revenue related to platform services may be deferred over the period not exceeding the term of the contract.

#### **11. Costs to obtain and fulfill a Contract:**

Deferred costs of fulfillment

Deferred costs to fulfill contracts primarily consist of domain registration costs which have been paid to a domain registry, and are capitalized as deferred costs of fulfillment. These costs are deferred and amortized over the life of the domain which generally ranges from one to ten years. The Company also defers certain technology design and data migration costs it incurs to fulfil its performance obligations contained in our platform services arrangements. For the nine months ended September 30, 2022, the Company deferred \$128 million and amortized \$128.8 million of contract costs. There was no impairment loss recognized in relation to the costs capitalized during the nine months ended September 30, 2022. Amortization expense of deferred costs is included in cost of revenue.

The breakdown of the movement in the deferred costs of fulfillment balance for the nine months ended September 30, 2022 is as follows (Dollar amounts in thousands of U.S. dollars).

|                              | <u>September 30, 2022</u> |
|------------------------------|---------------------------|
| Balance, beginning of period | \$ 112,711                |
| Deferral of costs            | 128,011                   |
| Recognized costs             | (128,796)                 |
| Balance, end of period       | <u>\$ 111,926</u>         |

## 12. Leases:

We lease datacenters, corporate offices and fiber-optic cables under operating leases. The Company does not have any leases classified as finance leases.

Our leases have remaining lease terms of 1 year to 20 years, some of which may include options to extend the leases for up to 5 years, and some of which may include options to terminate the leases within 1 year.

The components of lease expense were as follows (Dollar amounts in thousands of U.S. dollars):

|                                                                        | <u>For the Three Months Ended<br/>September 30,</u> |             | <u>For the Nine Months Ended<br/>September 30,</u> |             |
|------------------------------------------------------------------------|-----------------------------------------------------|-------------|----------------------------------------------------|-------------|
|                                                                        | <u>2022</u>                                         | <u>2021</u> | <u>2022</u>                                        | <u>2021</u> |
| Operating Lease Cost (leases with a total term greater than 12 months) | \$ 1,234                                            | \$ 674      | \$ 3,050                                           | \$ 1,812    |
| Short-term Lease Cost (leases with a total term of 12 months or less)  | 72                                                  | 21          | 156                                                | 103         |
| Variable Lease Cost                                                    | 267                                                 | 179         | 523                                                | 421         |
| Total Lease Cost                                                       | \$ 1,573                                            | \$ 874      | \$ 3,729                                           | \$ 2,336    |

Lease Cost is presented in general and administrative expenses and network expenses within our consolidated statements of operations and comprehensive income.

Information related to leases was as follows (Dollar amounts in thousands of U.S. dollars):

|                                                              | <u>For the Three Months Ended<br/>September 30,</u> |             | <u>For the Nine Months Ended<br/>September 30,</u> |             |
|--------------------------------------------------------------|-----------------------------------------------------|-------------|----------------------------------------------------|-------------|
|                                                              | <u>2022</u>                                         | <u>2021</u> | <u>2022</u>                                        | <u>2021</u> |
| <i>Supplemental cashflow information:</i>                    |                                                     |             |                                                    |             |
| Operating Lease - Operating Cash Flows (Fixed Payments)      | \$ 1,697                                            | \$ 2,929    | \$ 3,571                                           | \$ 4,040    |
| Operating Lease - Operating Cash Flows (Liability Reduction) | \$ 1,132                                            | \$ 590      | \$ 2,797                                           | \$ 1,538    |
| New ROU Assets - Operating Leases                            | \$ 2,339                                            | \$ 4,188    | \$ 5,884                                           | \$ 6,751    |

### *Supplemental balance sheet information related to leases:*

|                                       | <u>September 30, 2022</u> | <u>December 31, 2021</u> |
|---------------------------------------|---------------------------|--------------------------|
| Weighted Average Discount Rate        | 3.60%                     | 3.09%                    |
| Weighted Average Remaining Lease Term | 6.71 yrs                  | 7.74 yrs                 |

Maturity of lease liability as of September 30, 2022 (Dollar amounts in thousands of U.S. dollars):

|                             | <u>September 30, 2022</u> |
|-----------------------------|---------------------------|
| Remaining of 2022           | \$ 1,267                  |
| 2023                        | 5,068                     |
| 2024                        | 4,268                     |
| 2025                        | 2,760                     |
| 2026                        | 1,664                     |
| Thereafter                  | 4,119                     |
| Total future lease payments | 19,145                    |
| Less imputed interest       | 1,726                     |
| Total                       | <u>\$ 17,419</u>          |



Operating lease payments include payments under the non-cancellable term, without any additional amounts related to options to extend lease terms that are reasonably certain of being exercised.

As of September 30, 2022, we have not entered into lease agreements that have not yet commenced.

The Company has elected to use the single exchange rate approach when accounting for lease modifications. Under the single exchange rate approach, the entire right of use asset is revalued at the date of modification in the Company's functional currency provided the re-measurement is not considered a separate contract or if the re-measurement is related to change the lease term or assessment of a lessee option to purchase the underlying asset being exercised.

### 13. Segment Reporting:

#### *Reportable operating segments:*

We are organized and managed based on three operating segments which are differentiated primarily by their services, the markets they serve and the regulatory environments in which they operate. No operating segments have been aggregated to determine our reportable segments.

During the first quarter of 2022, the Company completed a reorganization of its reporting structure into three operating and reportable segments: Ting, Wavelo and Tucows Domains. Previously, the Company disclosed the three operating and reportable segments: Fiber Internet Services, Mobile Services and Domain Services. The retail portion of the previously disclosed Mobile Services, including the earn-out of the sale of legacy subscribers are now included within Tucows Corporate and ISP platform revenues and related results previously included within Ting are now included within Wavelo.

The change to our reportable operating segments was the result of a shift in our business and management structures that was completed during the first quarter of 2022. The operations supporting what was previously known as our Mobile Services segment have become increasingly operationally distinct between our mobile retail services and our platform services. As a result, commencing in the first quarter of 2022, our Chief Executive Officer ("CEO"), who is also our chief operating decision maker, reviews the operating results of Ting, Wavelo and Tucows Domains as three distinct segments in order to make key operating decisions as well as evaluate segment performance. Certain revenues and expenses disclosed under the Corporate category are excluded from segment EBITDA results as they are centrally managed and not monitored by or reported to our CEO by segment, including Mobile Retail Services, eliminations of intercompany transactions, portions of Finance and Human Resources that are centrally managed, Legal and Corporate IT.

Our reportable operating segments and their principal activities consist of the following:

1. Ting - This segment derives revenue from the retail high speed Internet access to individuals and small businesses primarily through the Ting website. Revenues are generated in the United States.
2. Wavelo – This segment derives revenue from platform and other professional services related to communication service providers, including Mobile Network Operators and Internet Service Providers, and are primarily generated in the United States.
3. Tucows Domains – This segment includes wholesale and retail domain name registration services, value added services and portfolio services. The Company primarily earns revenues from the registration fees charged to resellers in connection with new, renewed and transferred domain name registrations; the sale of retail Internet domain name registration and email services to individuals and small businesses. Domain Services revenues are attributed to the country in which the contract originates, primarily Canada and the United States.

Our segmented results include shared services allocations, including a profit margin, from Tucows Corporate for Finance, Human Resources and other technical services, to the operating units. In addition, Wavelo charges Ting a subscriber based monthly charge services rendered. Financial impacts from these allocations and cross segment charges are eliminated as part of the Tucows Corporate results.

#### *Key measure of segment performance:*

The CEO, as the chief operating decision maker, regularly reviews the operations and performance by segment. The CEO reviews segment revenue, gross margin and adjusted EBITDA (as defined below) as (i) key measures of performance for each segment and (ii) to make decisions about the allocation of resources. Sales and marketing expenses, technical operations and development expenses and general and administrative expenses and not reviewed or managed by the CEO separate from adjusted EBITDA, and are thus not included as separate measurements of segment profitability. Depreciation of property and equipment, amortization of intangibles assets, impairment of indefinite life intangible assets, gain on currency forward contracts and other expense net are organized along functional lines and are not included in the measurement of segment profitability. Total assets and total liabilities are centrally managed and are not reviewed at the segment level by the CEO. The Company follows the same accounting policies and methods of application as described in the "2021 Annual Report" for the segments as those described in "Note 10 – Revenue".

Our key measures of segment performance and their definitions are:

1. Segment gross margin - Net revenues less Direct cost of revenues attributable to each segment.
2. Segment adjusted EBITDA - segment gross margin as well as the recurring gain on sale of Ting Customer Assets, less network expenses and certain operating expenses attributable to each segment, such as sales and marketing, technical operations and development, general and administration expenses but excludes gains and losses from unrealized foreign currency, stock-based compensation and transactions that are one-time in nature and not indicative of on-going performance, including acquisition and transition costs. Certain revenues and expenses disclosed under the Tucows Corporate category are excluded from segment EBITDA results as they are centrally managed and not monitored by or reported to our CEO by segment, including Mobile Retail Services, eliminations of intercompany transactions, portions of Finance and Human Resources that are centrally managed, Legal and Corporate IT.

Our comparative period financial results have also been reclassified to reflect the current key measures of segment performance.

The Company believes that both segment gross margin and adjusted EBITDA measures are important indicators of the operational strength and performance of its segments, by identifying those items that are not directly a reflection of each segment's performance or indicative of ongoing operational and profitability trends. Segment gross margin and segment adjusted EBITDA both exclude depreciation of property and equipment, amortization of intangibles assets, impairment of indefinite life intangible assets that are included in the measurement of income before provision for income taxes pursuant to generally accepted accounting principles ("GAAP"). Accordingly, adjusted EBITDA is a non-GAAP financial performance measure and should be considered in addition to, but not as a substitute for net income, cash flow provided by operating activities and other measures of financial performance prepared in accordance with GAAP. Total assets and total liabilities are centrally managed and are not reviewed at the segment level by the CEO. The Company follows the same accounting policies and methods of application as described in the "2021 Annual Report" for the segments as those described in "Note 10 – Revenue".

Information by reportable segments (with the exception of disaggregated revenue, which is discussed in "Note 10 – Revenue"), which is regularly reported to the chief operating decision maker, and the reconciliations thereof to our income before taxes, are set out in the following tables (Dollar amounts in thousands of US dollars):

| Reconciliation of Adjusted EBITDA to Income before Provision for Income Taxes<br>(In Thousands of US Dollars)<br>(unaudited) | Three Months Ended September 30, |                     | Nine Months Ended September 30, |                     |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------------------|---------------------------------|---------------------|
|                                                                                                                              | 2022<br>(unaudited)              | 2021<br>(unaudited) | 2022<br>(unaudited)             | 2021<br>(unaudited) |
| Adjusted EBITDA                                                                                                              | \$ 7,879                         | \$ 12,205           | \$ 30,890                       | \$ 36,083           |
| Depreciation of property and equipment                                                                                       | 7,285                            | 4,758               | 20,063                          | 12,728              |
| Impairment and loss on disposition of property and equipment                                                                 | (16)                             | 470                 | 491                             | 536                 |
| Amortization of intangible assets                                                                                            | 2,842                            | 2,288               | 8,528                           | 7,253               |
| Interest expense, net                                                                                                        | 4,337                            | 1,169               | 8,555                           | 3,108               |
| Accretion of contingent consideration                                                                                        | 50                               | 96                  | 198                             | 287                 |
| Stock-based compensation                                                                                                     | 1,569                            | 1,126               | 4,396                           | 3,357               |
| Unrealized loss (gain) on change in fair value of foreign currency forward contracts                                         | -                                | 249                 | -                               | 606                 |
| Unrealized loss (gain) on foreign exchange revaluation of foreign denominated monetary assets and liabilities                | 348                              | 72                  | 446                             | 178                 |
| Acquisition and other costs <sup>1</sup>                                                                                     | 472                              | 901                 | 1,549                           | 2,034               |
| Income/(loss) before provision for income taxes                                                                              | <u>\$ (9,008)</u>                | <u>\$ 1,076</u>     | <u>\$ (13,336)</u>              | <u>\$ 5,996</u>     |

<sup>1</sup> Acquisition and other costs represent transaction-related expenses, transitional expenses, such as redundant post-acquisition expenses, primarily related to our acquisitions, including Simply Bits in November 2021. Expenses include severance or transitional costs associated with department, operational or overall company restructuring efforts, including geographic alignments.

|                                                      | Ting               | Wavelo          | Tucows Domains   | Tucows Corporate | Consolidated Totals |
|------------------------------------------------------|--------------------|-----------------|------------------|------------------|---------------------|
| <b>For the Three Months Ended September 30, 2022</b> |                    |                 |                  |                  |                     |
| Net Revenues                                         | \$ 10,946          | \$ 4,048        | \$ 60,281        | \$ 2,775         | \$ 78,050           |
| Direct cost of revenues                              | 4,290              | 235             | 42,111           | 1,666            | 48,302              |
| Segment Gross Margin                                 | 6,656              | 3,813           | 18,170           | 1,109            | 29,748              |
| Adjusted EBITDA                                      | <u>\$ (5,040)</u>  | <u>\$ (902)</u> | <u>\$ 10,385</u> | <u>\$ 3,436</u>  | <u>\$ 7,879</u>     |
| <b>For the Three Months Ended September 30, 2021</b> |                    |                 |                  |                  |                     |
| Net Revenues                                         | \$ 6,391           | \$ 3,845        | \$ 60,729        | \$ 4,928         | \$ 75,893           |
| Direct cost of revenues                              | 3,632              | 140             | 42,253           | 3,515            | 49,540              |
| Segment Gross Margin                                 | 2,759              | 3,705           | 18,476           | 1,413            | 26,353              |
| Adjusted EBITDA                                      | <u>\$ (5,490)</u>  | <u>\$ 1,751</u> | <u>\$ 11,473</u> | <u>\$ 4,471</u>  | <u>\$ 12,205</u>    |
| <b>For the Nine Months Ended September 30, 2022</b>  |                    |                 |                  |                  |                     |
| Net Revenues                                         | \$ 30,955          | \$ 19,865       | \$ 182,890       | \$ 8,523         | \$ 242,233          |
| Direct cost of revenues                              | 12,746             | 2,254           | 125,023          | 7,000            | 147,023             |
| Segment Gross Margin                                 | 18,209             | 17,611          | 57,867           | 1,523            | 95,210              |
| Adjusted EBITDA                                      | <u>\$ (15,546)</u> | <u>\$ 5,017</u> | <u>\$ 34,266</u> | <u>\$ 7,153</u>  | <u>\$ 30,890</u>    |
| <b>For the Nine Months Ended September 30, 2021</b>  |                    |                 |                  |                  |                     |
| Net Revenues                                         | \$ 17,021          | \$ 7,217        | \$ 184,215       | \$ 13,408        | \$ 221,861          |
| Direct cost of revenues                              | 9,247              | 338             | 125,814          | 9,461            | 144,860             |
| Segment Gross Margin                                 | 7,774              | 6,879           | 58,401           | 3,946            | 77,001              |
| Adjusted EBITDA                                      | <u>\$ (14,008)</u> | <u>\$ 1,394</u> | <u>\$ 36,790</u> | <u>\$ 11,907</u> | <u>\$ 36,083</u>    |

(b) The following is a summary of the Company's property and equipment by geographic region (Dollar amounts in thousands of US dollars):

|               | September 30, 2022 | December 31, 2021 |
|---------------|--------------------|-------------------|
| Canada        | \$ 1,463           | \$ 1,994          |
| United States | 252,509            | 170,630           |
| Europe        | 187                | 38                |
|               | <u>\$ 254,159</u>  | <u>\$ 172,662</u> |

(c) The following is a summary of the Company's amortizable intangible assets by geographic region (Dollar amounts in thousands of US dollars):

|               | September 30, 2022 | December 31, 2021 |
|---------------|--------------------|-------------------|
| Canada        | \$ 3,123           | \$ 1,386          |
| United States | 26,524             | 36,732            |
| Germany       | 60                 | -                 |
|               | <u>\$ 29,707</u>   | <u>\$ 38,118</u>  |

(d) Valuation and qualifying accounts (Dollar amounts in thousands of US dollars):

| Allowance for doubtful accounts       | Balance at beginning of period | Charged to costs and expenses | Write-offs during period | Balance at end of period |
|---------------------------------------|--------------------------------|-------------------------------|--------------------------|--------------------------|
| Nine Months Ended September 30, 2022  | \$ 541                         | \$ 195                        | \$ -                     | \$ 736                   |
| Twelve months ended December 31, 2021 | \$ 222                         | \$ 319                        | \$ -                     | \$ 541                   |

#### 14. Stockholders' Equity:

The following table summarizes stockholders' equity transactions for the three-month and nine-month ended September 30, 2022 (Dollar amounts in thousands of U.S. dollars):

|                                                                                                            | Common stock |           | Additional<br>paid in<br>capital | Retained<br>earnings | Accumulated<br>other<br>comprehensive<br>income (loss) | Total<br>stockholders'<br>equity |
|------------------------------------------------------------------------------------------------------------|--------------|-----------|----------------------------------|----------------------|--------------------------------------------------------|----------------------------------|
|                                                                                                            | Number       | Amount    |                                  |                      |                                                        |                                  |
| Balances, June 30, 2022                                                                                    | 10,768,747   | \$ 30,193 | \$ 4,484                         | \$ 77,325            | \$ 1,498                                               | \$ 113,500                       |
| Exercise of stock options                                                                                  | 14,142       | 354       | (117)                            | -                    | -                                                      | 237                              |
| Shares deducted from exercise of stock options for payment of withholding taxes and exercise consideration | (1,193)      | -         | -                                | -                    | -                                                      | -                                |
| Stock-based compensation                                                                                   | 8,934        | 488       | 1,081                            | -                    | -                                                      | 1,569                            |
| Net income                                                                                                 | -            | -         | -                                | (7,981)              | -                                                      | (7,981)                          |
| Other comprehensive income (loss)                                                                          | -            | -         | -                                | -                    | (1,774)                                                | (1,774)                          |
| Balances, September 30, 2022                                                                               | 10,790,630   | \$ 31,035 | \$ 5,448                         | \$ 69,344            | \$ (276)                                               | \$ 105,551                       |

|                                                                                                            | Common stock |           | Additional<br>paid in<br>capital | Retained<br>earnings | Accumulated<br>other<br>comprehensive<br>income (loss) | Total<br>stockholders'<br>equity |
|------------------------------------------------------------------------------------------------------------|--------------|-----------|----------------------------------|----------------------|--------------------------------------------------------|----------------------------------|
|                                                                                                            | Number       | Amount    |                                  |                      |                                                        |                                  |
| Balances, December 31, 2021                                                                                | 10,747,417   | \$ 28,515 | \$ 2,764                         | \$ 83,470            | \$ 343                                                 | \$ 115,092                       |
| Exercise of stock options                                                                                  | 26,709       | 1,187     | (379)                            | -                    | -                                                      | 808                              |
| Shares deducted from exercise of stock options for payment of withholding taxes and exercise consideration | (3,053)      | -         | -                                | -                    | -                                                      | -                                |
| Stock-based compensation                                                                                   | 19,557       | 1,333     | 3,063                            | -                    | -                                                      | 4,396                            |
| Net income                                                                                                 | -            | -         | -                                | (14,126)             | -                                                      | (14,126)                         |
| Other comprehensive income (loss)                                                                          | -            | -         | -                                | -                    | (619)                                                  | (619)                            |
| Balances, September 30, 2022                                                                               | 10,790,630   | \$ 31,035 | \$ 5,448                         | \$ 69,344            | \$ (276)                                               | \$ 105,551                       |

#### 2022 Stock Buyback Program

On February 10, 2022, the Company announced that its Board approved a stock buyback program to repurchase up to \$40 million of its common stock in the open market. Purchases will be made exclusively through the facilities of the NASDAQ Capital Market. The stock buyback program commenced on February 11, 2022 and is expected to terminate on or before February 10, 2023. For the three and nine months ended September 30, 2022, the Company did not repurchase shares under this program.

#### 2021 Stock Buyback Program

On February 9, 2021, the Company announced that its Board approved a stock buyback program to repurchase up to \$40 million of its common stock in the open market. Purchases will be made exclusively through the facilities of the NASDAQ Capital Market. The stock buyback program commenced on February 10, 2021 and was terminated on February 9, 2022. For the nine months ended September 30, 2022 the Company did not repurchase shares under this program. For the three months and nine months ended September 30, 2021 the Company did not repurchase shares under this program.

#### 2020 Stock Buyback Program

On February 12, 2020, the Company announced that its Board had approved a stock buyback program to repurchase up to \$40 million of its common stock in the open market. The \$40 million buyback program commenced on February 13, 2020 and terminated on February 12, 2021. For the nine months ended September 30, 2021, the Company did not repurchase shares under this program.

#### 15. Share-based Payments:

##### Stock options

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model. Because option-pricing models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. The assumptions presented in the table below represent the weighted average of the applicable assumption used to value stock options at their grant date. The Company calculates expected volatility based on historical volatility of the Company's common shares. The expected term, which represents the period of time that options granted are expected to be outstanding, is estimated based on historical exercise experience. The Company evaluated historical exercise behavior when determining the expected term assumptions. The risk-free rate assumed in valuing the options is based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of the option. The Company determines the expected dividend yield percentage by dividing the expected annual dividend by the market price of Tucows Inc. common shares at the date of grant.

Details of stock option transactions for the three months ended September 30, 2022 and September 30, 2021 are as follows (Dollar amounts in thousands of U.S. dollars, except per share amounts):

|                                    | Three Months Ended September 30, 2022 |                                           | Three Months Ended September 30, 2021 |                                           |
|------------------------------------|---------------------------------------|-------------------------------------------|---------------------------------------|-------------------------------------------|
|                                    | Number of shares                      | Weighted average exercise price per share | Number of shares                      | Weighted average exercise price per share |
| Outstanding, beginning of period   | 1,070,045                             | 59.88                                     | 991,097                               | \$ 61.81                                  |
| Granted                            | 24,500                                | 43.80                                     | 26,675                                | 76.93                                     |
| Exercised                          | (14,142)                              | 20.53                                     | (46,803)                              | 46.47                                     |
| Forfeited                          | (4,414)                               | 66.32                                     | (14,087)                              | 68.95                                     |
| Expired                            | (21,312)                              | 57.96                                     | (648)                                 | 56.40                                     |
| Outstanding, end of period         | 1,054,677                             | 60.04                                     | 956,234                               | 62.88                                     |
| Options exercisable, end of period | 533,395                               | \$ 61.51                                  | 470,317                               | \$ 54.87                                  |

Details of stock option transactions for the nine months ended September 30, 2022 and September 30, 2021 are as follows (Dollar amounts in thousands of U.S. dollars, except per share amounts):

|                                    | Nine Months Ended September 30, 2022 |                                           | Nine Months Ended September 30, 2021 |                                           |
|------------------------------------|--------------------------------------|-------------------------------------------|--------------------------------------|-------------------------------------------|
|                                    | Number of shares                     | Weighted average exercise price per share | Number of shares                     | Weighted average exercise price per share |
| Outstanding, beginning of period   | 904,151                              | \$ 64.36                                  | 845,020                              | \$ 55.31                                  |
| Granted                            | 242,980                              | 43.09                                     | 265,725                              | 79.18                                     |
| Exercised                          | (26,709)                             | 37.53                                     | (120,828)                            | 45.36                                     |
| Forfeited                          | (35,808)                             | 72.22                                     | (31,649)                             | 64.54                                     |
| Expired                            | (29,937)                             | 58.25                                     | (2,034)                              | 60.17                                     |
| Outstanding, end of period         | 1,054,677                            | 60.04                                     | 956,234                              | 62.88                                     |
| Options exercisable, end of period | 533,395                              | \$ 61.51                                  | 470,317                              | \$ 54.87                                  |

As of September 30, 2022, the exercise prices, weighted average remaining contractual life of outstanding options and intrinsic values were as follows (Dollar amounts in thousands of U.S. dollars, except per share amounts):

| Exercise price    | Options outstanding |                                           |                                                     |                           | Options exercisable |                                           |                                                     |                           |
|-------------------|---------------------|-------------------------------------------|-----------------------------------------------------|---------------------------|---------------------|-------------------------------------------|-----------------------------------------------------|---------------------------|
|                   | Number outstanding  | Weighted average exercise price per share | Weighted average remaining contractual life (years) | Aggregate intrinsic value | Number exercisable  | Weighted average exercise price per share | Weighted average remaining contractual life (years) | Aggregate intrinsic value |
| \$21.10 - \$21.10 | 13,750              | 21.10                                     | 0.3                                                 | 224                       | 13,750              | 21.10                                     | 0.3                                                 | 224                       |
| \$40.04 - \$48.00 | 245,230             | 42.39                                     | 6.4                                                 | -                         | 7,000               | 47.29                                     | 2.3                                                 | -                         |
| \$51.82 - \$59.98 | 199,883             | 55.72                                     | 2.0                                                 | -                         | 194,333             | 55.72                                     | 1.9                                                 | -                         |
| \$60.01 - \$68.41 | 321,827             | 62.06                                     | 3.8                                                 | -                         | 225,394             | 62.66                                     | 3.6                                                 | -                         |
| \$70.13 - \$79.51 | 257,487             | 78.41                                     | 5.5                                                 | -                         | 89,168              | 77.75                                     | 5.1                                                 | -                         |
| \$80.61 - \$82.07 | 16,500              | 81.27                                     | 6.0                                                 | -                         | 3,750               | 82.07                                     | 6.1                                                 | -                         |
|                   | 1,054,677           | \$ 60.04                                  | 4.5                                                 | \$ 224                    | 533,395             | \$ 61.51                                  | 3.1                                                 | \$ 224                    |

Total unrecognized compensation cost relating to unvested stock options at September 30, 2022, prior to the consideration of expected forfeitures, is approximately \$13.8 million and is expected to be recognized over a weighted average period of 2.5 years.

The Company recorded stock-based compensation of \$1.6 million for the three months ended September 30, 2022, and \$1.1 million for the three months ended September 30, 2021, respectively.

The Company recorded stock-based compensation of \$4.4 million for the nine months ended September 30, 2022, and \$3.4 million for the nine months ended September 30, 2021, respectively.

The Company has not capitalized any stock-based compensation expense as part of the cost of an asset.

## 16. Fair Value Measurement:

For financial assets and liabilities recorded in our financial statements at fair value we utilize a valuation hierarchy for disclosure of the inputs to valuation used to measure fair value. This hierarchy prioritizes the inputs into three broad levels. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities. Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument. Level 3 inputs are unobservable inputs based on the Company's own assumptions used to measure assets and liabilities at fair value. A financial asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Equity investments without readily determinable fair value include ownership rights that do not provide the Company with control or significant influence. Such equity investments are recorded at cost, less any impairment, and adjusted for subsequent observable price changes as of the date that an observable transaction takes place. Subsequent adjustments are recorded in other income (expense), net.

The following table provides a summary of the fair values of the Company's derivative instruments measured at fair value on a recurring basis as at September 30, 2022 (Dollar amounts in thousands of U.S. dollars):

|                                  | September 30, 2022           |         |         |               |
|----------------------------------|------------------------------|---------|---------|---------------|
|                                  | Fair Value Measurement Using |         |         | Assets        |
|                                  | Level 1                      | Level 2 | Level 3 | at Fair value |
| Derivative instrument asset, net | \$ -                         | \$ 26   | \$ -    | \$ 26         |
| Total asset, net                 | \$ -                         | \$ 26   | \$ -    | \$ 26         |

The following table provides a summary of the fair values of the Company's derivative instruments measured at fair value on a recurring basis as at December 31, 2021 (Dollar amounts in thousands of U.S. dollars):

|                                  | December 31, 2021            |         |         |                         |
|----------------------------------|------------------------------|---------|---------|-------------------------|
|                                  | Fair Value Measurement Using |         |         | Assets<br>at Fair value |
|                                  | Level 1                      | Level 2 | Level 3 |                         |
| Derivative instrument asset, net | \$ -                         | \$ 452  | \$ -    | \$ 452                  |
| Total assets, net                | \$ -                         | \$ 452  | \$ -    | \$ 452                  |

## 17. Other income:

On August 1, 2020, the Company entered into an Asset Purchase Agreement (the "DISH Purchase Agreement"), by and between the Company and DISH Wireless L.L.C. ("DISH"). Under the DISH Purchase Agreement and in accordance with the terms and conditions set forth therein, the Company sold to DISH its mobile customer accounts that are marketed and sold under the Ting brand (other than certain customer accounts associated with one network operator) ("Transferred Assets") and derecognized intangible assets and capitalized contract costs associated with the Transferred Assets in the amount of \$3.5 million. For a period of 10 years following the execution of the DISH Purchase Agreement, DISH will pay a monthly fee to the Company generally equal to an amount of net revenue received by DISH in connection with the transferred customer accounts minus certain fees and expenses, as further set forth in the DISH Purchase Agreement. The gain is presented net of the original cost base of the Transferred Assets. The Company earned \$4.7 million and \$5.6 million under the DISH Purchase Agreement during the three months ended September 30, 2022 and 2021. The Company earned \$14 million and \$15.8 million under the DISH Purchase Agreement during the nine months ended September 30, 2022 and 2021, respectively.

(Dollar amounts in thousands of U.S. dollars)

|                                             | Three Months Ended September 30, |          | Nine Months Ended September 30, |           |
|---------------------------------------------|----------------------------------|----------|---------------------------------|-----------|
|                                             | 2022                             | 2021     | 2022                            | 2021      |
| Income earned on sale of Transferred Assets | \$ 4,737                         | \$ 5,564 | \$ 14,009                       | \$ 15,767 |
| Gain on sale of Ting Customer Assets        | \$ 4,737                         | \$ 5,564 | \$ 14,009                       | \$ 15,767 |

## 18. Redeemable preferred shares:

The Company entered into a Series A Preferred Unit Purchase Agreement (the "Unit Purchase Agreement") with Generate TF Holdings, LLC, a Delaware limited liability company ("Generate") on August 8, 2022 (the "Effective Date"), and closed the transaction contemplated thereby on August 11, 2022 (the "Transaction Close") pursuant to which the Company issued and sold 10,000,000 units of its Series A Preferred Units to Generate at a cash purchase price of \$6.00 per unit ("Initial Funding"). Under the Unit Purchase Agreement, after the Transaction Close until the third anniversary of the Effective Date (the "End Date") the Company will, upon the achievement of pre-determined operational and financial drawdown milestones issue and sell in subsequent fundings an aggregate of 23,333,333.34 units of additional Series A Preferred Units on the same terms and conditions as in the Initial Funding ("Milestone Fundings"). The investment provides the Company with \$60 million of capital upon the Initial Funding, with an additional \$140 million of capital commitments available to The Company over the subsequent three-year period if the milestones are achieved. From the Transaction Close until the earlier of (i) the End Date and (ii) the date upon which Generate has paid \$140 million pursuant to Milestone Fundings, the Company is required to pay Generate a standby fee at a rate of 0.50% of any portion of the unpaid \$140 million capital commitment which will be paid quarterly. The Series A Preferred Units accrue a preferred return to the holder at a rate of 15% per annum, subject to adjustments based on the value of approved projects under the Equity Capital Contribution Agreement (the "ECC Agreement"). The preferred return on the Series A Preferred Units purchased under the Unit Purchase Agreement may be adjusted down to a floor of 13% or up to a ceiling of 17% per annum based on commitment and contribution amounts under the ECC Agreement. The preferred return accrues daily, and is compounded quarterly. The preferred return accrued during the first two years is not payable unless and until the Series A Preferred Units are redeemed. The preferred return accrued after the second anniversary of the Transaction Close is payable by the Company quarterly. If the Company should redeem the Series A Preferred Units prior to the fourth anniversary of the Transaction Close, the Company is required to pay a make-whole premium, which is calculated as the cumulative and compounded preferred return that would have accrued (at the preferred return rate in effect immediately prior to such redemption) on the outstanding unreturned capital balance with respect to the Series A Preferred Units through and including the six-year anniversary of the Transaction Close had such Series A Preferred Unit not been redeemed, discounted at an agreed upon treasury rate plus 50 basis points, compounded quarterly (the "Make-Whole-Premium").

The Company's Amended and Restated Limited Liability Company Agreement (the "LLC Agreement"), in the event that (i) the Company fails to pay the preferred return for two consecutive quarters, (ii) the Company fails to pay the redemption price in connection with any redemption of the Series A Preferred Units, (iii) the Company materially breaches its obligations under the LLC Agreement, (iv) there occurs an event of default (or similar term) under Tucows Inc.'s or its affiliates' credit agreement, (v) there occurs material breach if not cured or otherwise remedied in accordance with the terms of any credit facility (taking into account any cure periods), by the Company or any of its Subsidiaries under any debt facilities where the Company or any of its Subsidiaries incurs indebtedness for borrowed money, or (vi) the Company breaches any covenant under the Unit Purchase Agreement, Generate has the option to either (i) convert Series A Preferred Units based on the Redemption Price into common units of the Company based on the then applicable conversion price ; or (ii) compelling the sale of certain assets of the Company or its subsidiaries of equal value to the Redemption Price

Under the terms of the LLC Agreement, the Company is mandatorily required to redeem the redeemable preferred shares prior to the earliest of (i) a sale of the Company, (ii) a public offering, (iii) an event of default (or similar term) by Tucows Inc. or any of its affiliates under, (iv) a material breach if not cured or otherwise remedied in accordance with the terms of any credit facility (taking into account any cure periods), by the Company or any of its Subsidiaries under any debt facilities where the Company or any of its Subsidiaries incurs indebtedness for borrowed money, (v) the Company failed to pay the preferred return for two consecutive quarters, and (vi) the six-year anniversary of the Transaction Close. Due to the fact that the redeemable preferred shares are mandatorily redeemable, the redeemable preferred units are classified as a liability in the accompanying consolidated balance sheets. The liability was initially recorded at fair value and subsequently recorded at the present value of the settlement amount, which includes the preferred return payments required until the instrument's expected maturity on the sixth anniversary of the Transaction Close, August 10, 2028 using the implicit rate of return of the instrument, 15%. The Company recorded and \$1.3 million accretion expense on the redeemable preferred shares for the three and nine months ended September 30, 2022, recorded as interest expense, net in the accompanying consolidated statements of operations and comprehensive income (loss).

The Company incurred \$0.8 million of legal fees related to the redeemable preferred share issuance, which have been reflected as a reduction to the carrying amount of the redeemable preferred unit balance and will be amortized to interest expense, net in the accompanying consolidated statements of operations and comprehensive income (loss) over the expected six-year term instrument.

The redeemable preferred units have an aggregate liquidation preference of \$60 million, plus any accrued and unpaid preferred return thereon, plus a Make-Whole Premium should redemption occur before the fourth anniversary of the Transaction Date and are senior to the Ting Fiber, LLC common shares with respect to sale, dissolution, liquidation or winding up of the Company.

The following table summarizes the Company's borrowings under the preferred share agreement (Dollar amounts in thousands of U.S. dollars):

|                                               | September<br>30, 2022 | December<br>31, 2021 |
|-----------------------------------------------|-----------------------|----------------------|
| Opening Balance                               | \$ 60,000             | \$ -                 |
| Add: Accretion of redeemable preferred shares | 1,250                 | -                    |
| Less: Deferred Preferred Financing Costs      | (734)                 | -                    |
| Total Redeemable Preferred Shares             | \$ 60,516             | \$ -                 |

The following table summarizes our scheduled repayments as of September 30, 2022 (Dollar amounts in thousands of U.S. dollars):

|                     |                   |
|---------------------|-------------------|
| Remainder of 2022   | \$ -              |
| 2023                | -                 |
| 2024                | 4,788             |
| 2025                | 12,309            |
| 2026 and thereafter | 113,070           |
|                     | <u>\$ 130,167</u> |

**19. Contingencies:**

From time to time, the Company has legal claims and lawsuits in connection with its ordinary business operations. The Company vigorously defends such claims. While the final outcome with respect to any actions or claims outstanding or pending as of September 30, 2022 cannot be predicted with certainty, management does not believe that the resolution of these claims, individually or in the aggregate, will have a material adverse effect on the Company's financial position.



**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS****CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q contains, in addition to historical information, forward-looking statements by us with regard to our expectations as to financial results and other aspects of our business that involve risks and uncertainties and may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as “may,” “should,” “anticipate,” “believe,” “plan,” “estimate,” “expect” and “intend,” and other similar expressions are intended to identify forward-looking statements. The forward-looking statements contained in this report include statements regarding, among other things: the competition we expect to encounter as our business develops and competes in a broader range of Internet services; the Company's foreign currency requirements, specifically for the Canadian dollar; Wavelo, and Ting subscriber growth and retention rates; our belief regarding the underlying platform for our Tucows Domains services, our expectation regarding the trend of sales of domain names and advertising; our expectations regarding portfolio revenue, our belief that, by increasing the number of services we offer, we will be able to generate higher revenues; our expectation regarding litigation; the potential impact of current and pending claims on our business; our valuations of certain deferred tax assets; our expectation to collect our outstanding receivables, net of our allowance for doubtful accounts; our expectation regarding fluctuations in certain expense and cost categories; our expectations regarding our unrecognized tax; our expectations regarding cash from operations to fund our business; the impact of cancellations of or amendments to market development fund programs under which we receive funds, our expectation regarding our ability to manage realized gains/losses from foreign currency contracts; our partnership with an affiliate of Generate TF Holdings, LLC, a Delaware limited liability company (“Generate Affiliate”); the impact of the COVID-19 pandemic on our business, operations and financial performance; and general business conditions and economic uncertainty. These statements are based on management's current expectations and are subject to a number of uncertainties and risks that could cause actual results to differ materially from those described in the forward-looking statements. Many factors affect our ability to achieve our objectives and to successfully develop and commercialize our services including:

- Our ability to continue to generate sufficient working capital to meet our operating requirements;
- Our ability to service our debt and preferred share commitments;
- Our ability to maintain a good working relationship with our vendors and customers;
- The ability of vendors to continue to supply our needs;
- Actions by our competitors;
- Our ability to attract and retain qualified personnel in our business;
- Our ability to effectively manage our business;
- The effects of any material impairment of our goodwill or other indefinite-lived intangible assets;
- Our ability to obtain and maintain approvals from regulatory authorities on regulatory issues;
- Our ability to invest in the build-out of fiber networks into selected towns and cities to provide Internet access services to residential and commercial customers while maintaining the development and sales of our established services;
- Our ability to meet the operational and financial drawdown milestones under the Unit Purchase Agreement with Generate TF Holdings, LLC, a Delaware limited liability company (“Generate”), which provides the Company with the ability to obtain additional financing to invest in the expansion of fiber networks;
- Adverse tax consequences such as those related to changes in tax laws or tax rates or their interpretations, including with respect to the impact of the Tax Cuts and Jobs Act of 2017;
- The application of judgment in determining our global provision for income taxes, deferred tax assets or liabilities or other tax liabilities given the ultimate tax determination is uncertain;
- Our ability to effectively integrate acquisitions;
- Our ability to monitor, assess and respond to the rapidly changing impacts of the COVID-19 pandemic, geopolitical developments, economic impacts including rising inflation and interest rates. Our current assessment of expected impacts has been included below as part of the Opportunities, Challenges & Risks section.
- Our ability to collect anticipated payments from DISH in connection with the 10-year payment stream that is a function of the margin generated by the transferred subscribers over a 10-year period pursuant to the terms of the DISH Purchase Agreement;
- Pending or new litigation; and
- Factors set forth under the caption “Item 1A Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 filed with the SEC on March 1, 2022 (the “2021 Annual Report”) and in “Item 1A Risk Factors” in Part II of this report.

As previously disclosed under the caption “Item 1A Risk Factors” in our 2021 Annual Report, data protection regulations may impose legal obligations on us that we cannot meet or that conflict with our ICANN contractual requirements.

This list of factors that may affect our future performance and financial and competitive position and the accuracy of forward-looking statements is illustrative, but it is by no means exhaustive. Accordingly, all forward-looking statements should be evaluated with the understanding of their inherent uncertainty. All forward-looking statements included in this document are based on information available to us as of the date of this document, and we assume no obligation to update these cautionary statements or any forward-looking statements, except as required by law. These statements are not guarantees of future performance.

We qualify all the forward-looking statements contained in this Quarterly Report on Form 10-Q by the foregoing cautionary statements.

## OVERVIEW

Our mission is to provide simple useful services that help people unlock the power of the Internet.

We accomplish this by reducing the complexity of our customers' experience as they access the Internet (at home or on the go) and while using Internet services such as domain name registration, email and other Internet related services. During the first quarter of 2022, the Company completed a reorganization of its reporting structure into three operating and reportable segments: Ting, Wavelo and Tucows Domains. Previously, we disclosed the three operating and reportable segments: Fiber Internet Services, Mobile Services and Domain Services. The change to our reportable operating segments was the result of a shift in our business and management structures that was initiated in 2021 and completed during the first quarter of 2022. The operations supporting what was previously known as our Mobile Services segment have become increasingly operationally distinct between our mobile retail services and our platform services. Through the reorganization of our reporting structure, the Mobile Services segment was changed to the Wavelo segment, which no longer includes the 10-year payment stream on transferred legacy subscribers earned as part of the DISH Purchase Agreement as well as the retail sale of mobile phones, retail telephony services and transition services, all of which are not considered a part of our core business operations with the shift from Mobile Virtual Network Operator (MVNO) to Wavelo provider. The Wavelo segment includes our platform and professional services offerings, as well as the billing solutions to Internet services providers ("ISPs") (branded as Platypus), that was previously reported under the Ting segment. The Ting segment now only contains the operating results of our retail high speed Internet access operations, excluding the billing solutions moved to the new Wavelo segment. The product offerings included in the Tucows Domains segment remains unchanged. The three segments are differentiated primarily by their services, the markets they serve and the regulatory environments in which they operate.

Our management regularly reviews our operating results on a consolidated basis, principally to make decisions about how we utilize our resources and to measure our consolidated operating performance. To assist us in forecasting growth and to help us monitor the effectiveness of our operational strategies, our management regularly reviews revenues, operating results and performance for each of our service offerings in order to gain more depth and understanding of the key business metrics driving our business. Commencing in the first quarter of 2022, our Chief Executive Officer (CEO), who is also our chief operating decision maker, reviewed the operating results of Ting, Wavelo and Tucows Domains as three distinct segments in order to make key operating decisions as well as evaluate segment performance. Accordingly, effective January 1, 2022 we report Ting, Wavelo and Tucows Domains revenue separately. The 10-year payment stream on transferred legacy subscribers as well as retail sale of mobile phones, retail telephony services and transition services will be excluded from segment EBITDA results as they are no longer centrally managed and not monitored by or reported to our CEO by segment.

For the three months ended September 30, 2022 and September 30, 2021, we reported net revenue of \$78.1 million and \$75.9 million, respectively.

For the nine months ended September 30, 2022 and September 30, 2021, we reported net revenue of \$242.2 million and \$221.9 million, respectively.

On August 8, 2022, the Company entered into a Third Amended and Restated Senior Secured Credit Agreement (the “Amended Credit Agreement”) with its existing syndicate of lenders (“the Lenders”). The Amended Credit Agreement continues to provide the Company with access to an aggregate of \$240 million in committed funds (“the Credit Facility”). Under the Amended Credit Agreement, and in connection with the Unit Purchase Agreement the Lenders have agreed that Ting Fiber, Inc. (converted to Ting LLC) and its wholly owned subsidiaries shall cease to be Guarantors under the Credit Facility and shall automatically be released from their respective guarantee and security documents, including a release of the Lenders’ security interests and liens upon the assets of such entities. Additionally, the Amended Credit Agreement has extended the maturity of the Credit Facility to June 14, 2024. The Company is subject to the following financial covenants at all times, which are to be calculated on a rolling four quarter basis: (i) maximum Total Funded Debt to Adjusted EBITDA Ratio of 4.00:1.00 until September 29, 2023 and 3.75:1.00 thereafter; and (ii) minimum Interest Coverage Ratio of 3.00:1.00. The financial covenant calculations will exclude the financial results of Ting Fiber Inc. (converted to Ting LLC) and its wholly owned subsidiaries. The Amended Credit Agreement added SOFR Loans as a form of advance available under the Credit Facility to replace LIBOR Rate Advances, and such SOFR Loans may bear interest based on Adjusted Daily Simple SOFR (defined to be the applicable SOFR rate published by the Federal Reserve Bank of New York plus 0.10% per annum subject to a floor of zero) or Adjusted Term SOFR (defined to be the applicable SOFR rate published by CME Group Benchmark Administration Limited plus 0.10% for one-month, 0.15% for three-months, and 0.25% for six-months per annum).

### ***Ting***

Ting and its wholly owned subsidiaries - Cedar, and Simply Bits includes the provision of fixed high-speed Internet access services to select towns throughout the United States, with further expansion underway to both new and existing markets. Our primary sales channel is through the Ting website. The primary focus of this segment is to provide reliable Gigabit Internet services to consumer and business customers. Revenues are all generated in the U.S. and are provided on a monthly basis and have no fixed contract terms.

### ***Wavelo***

Wavelo includes the provision of full-service platforms and professional services providing a variety of solutions that support Communication Services providers (“CSPs”), including subscription and billing management, network orchestration and provisioning, and individual developer tools. Wavelo’s focus is to provide accessible telecom software to CSPs globally, minimizing network and technical barriers and improving internet access worldwide. Wavelo’s suite of flexible, cloud-based software simplifies the management of mobile and internet network access, enabling CSPs to better utilize their existing infrastructure, focus on customer experience and scale their businesses faster. Wavelo launched as a proven asset for CSPs, with DISH using Wavelo’s Mobile Network Operating System (“MONOS”) software to drive additional value within its Digital Operator Platform since early 2021. More recently, Ting Internet has also integrated Wavelo’s Internet Service Operating System (“ISOS”) software to enable faster subscriber growth and footprint expansion. The Wavelo segment also includes the Platypus brand and platform, our legacy billing solution for ISPs, that was previously reported under the Ting segment. Wavelo revenues from MONOS, ISOS and professional services are all generated in the U.S. and our customer agreements have set contract lengths with the underlying CSP. Similarly, Platypus revenues are largely generated in the U.S., with a small portion earned in Canada and other countries.

### ***Tucows Domains***

Tucows Domains includes wholesale and retail domain name registration services, as well as value added services derived through our OpenSRS, eNom, Ascio, EPAG and Hover brands. We earn revenues primarily from the registration fees charged to resellers in connection with new, renewed and transferred domain name registrations. In addition, we earn revenues from the sale of retail domain name registration and email services to individuals and small businesses. Tucows Domains revenues are attributed to the country in which the contract originates, which is primarily in Canada and the U.S. for OpenSRS and eNom brands. Ascio domain services contracts and EPAG agreements primarily originate in Europe.

Our primary distribution channel is a global network of approximately 35,000 resellers that operate in over 150 countries and who typically provide their customers, the end-users of Internet-based services, with solutions for establishing and maintaining an online presence. Our primary focus is serving the needs of this network of resellers by providing the broadest portfolio of generic top-level domain (“gTLD”) and the country code top-level domain options and related services, a white-label platform that facilitates the provisioning and management of domain names, a powerful Application Program Interface, easy-to-use interfaces, comprehensive management and reporting tools, and proactive and attentive customer service. Our services are integral to the solutions that our resellers deliver to their customers. We provide “second tier” support to our resellers by email, chat and phone in the event resellers experience issues or problems with our services. In addition, our Network Operating Center proactively monitors all services and network infrastructure to address deficiencies before customer services are impacted.

We believe that the underlying platforms for our services are among the most mature, reliable and functional reseller-oriented provisioning and management platforms in our industry, and we continue to refine, evolve and improve these services for both resellers and end-users. Our business model is characterized primarily by non-refundable, up-front payments, which lead to recurring revenue and positive operating cash flow.

Wholesale, primarily branded as OpenSRS, eNom, EPAG and Ascio, derives revenue from its domain service and from providing value-added services. The OpenSRS, eNom, EPAG and Ascio domain services manage 24.5 million domain names under the Tucows, eNom, EPAG and Ascio ICANN registrar accreditations and for other registrars under their own accreditations.

Value-Added Services include hosted email which provides email delivery and webmail access to millions of mailboxes, Internet security services, WHOIS privacy, publishing tools and other value-added services. All of these services are made available to end-users through a network of 35,000 web hosts, ISPs, and other resellers around the world. In addition, we also derive revenue by monetizing domain names which are near the end of their lifecycle through advertising or auction sale.

Retail, primarily the Hover and eNom portfolio of websites, including eNom, and eNom Central, derive revenues from the sale of domain name registration, email services to individuals and small businesses. Retail also includes our Personal Names Service – based on 36,000 surname domains – that allows roughly two-thirds of Americans to purchase a surname-based email address. The retail segment includes the sale of the rights to its portfolio of surname domains used in connection with our Realnames email service as well as our Exact Hosting Service, that provides Linux hosting services for websites of individuals and small businesses.

## KEY BUSINESS METRICS AND NON-GAAP MEASURES

We regularly review a number of business metrics, including the following key metrics and non-GAAP measures, to assist us in evaluating our business, measure the performance of our business model, identify trends impacting our business, determine resource allocations, formulate financial projections and make strategic business decisions. The following tables set forth the key business metrics which we believe are the primary indicators of our performance for the periods presented:

### Adjusted EBITDA

Tucows reports all financial information in accordance with United States generally accepted accounting principles (“GAAP”). Along with this information, to assist financial statement users in an assessment of our historical performance, we typically disclose and discuss a non-GAAP financial measure, adjusted EBITDA, on investor conference calls and related events that exclude certain non-cash and other charges as we believe that the non-GAAP information enhances investors’ overall understanding of our financial performance. Please see discussion of adjusted EBITDA in the Results of Operations section below.

| Ting                                                       | September 30, |      |
|------------------------------------------------------------|---------------|------|
|                                                            | 2022          | 2021 |
|                                                            | (in '000's)   |      |
| Ting Internet accounts under management                    | 33            | 23   |
| Ting Internet owned infrastructure serviceable addresses   | 90            | 68   |
| Ting Internet partner infrastructure serviceable addresses | 19            | 14   |

| Tucows Domains                                                              | For the Three Months Ended September 30,(1) |        |
|-----------------------------------------------------------------------------|---------------------------------------------|--------|
|                                                                             | 2022                                        | 2021   |
|                                                                             | (in 000's)                                  |        |
| Total new, renewed and transferred-in domain name transactions <sup>2</sup> | 5,234                                       | 5,356  |
| Domains under management                                                    | 24,504                                      | 25,430 |

- (1) For a discussion of these period-to-period changes in the domains provisioned and domains under management and how they impacted our financial results see the Net Revenues discussion below.
- (2) Includes all transactions processed under our accreditations for our resellers and our retail brands, as well as transactions processed on behalf of other registrars using our platform.

| Tucows Domains                                                              | For the Nine Months Ended September 30,(1) |        |
|-----------------------------------------------------------------------------|--------------------------------------------|--------|
|                                                                             | 2022                                       | 2021   |
|                                                                             | (in 000's)                                 |        |
| Total new, renewed and transferred-in domain name transactions <sup>2</sup> | 16,617                                     | 17,302 |
| Domains under management                                                    | 24,504                                     | 25,430 |

- (1) For a discussion of these period-to-period changes in the domains provisioned and domains under management and how they impacted our financial results see the Net Revenues discussion below.
- (2) Includes all transactions processed under our accreditations for our resellers and our retail brands, as well as transactions processed on behalf of other registrars using our platform.

| Tucows Domains                                                         | September 30, |        |
|------------------------------------------------------------------------|---------------|--------|
|                                                                        | 2022          | 2021   |
|                                                                        | (in 000's)    |        |
| Registered using Registrar Accreditation belonging to the Tucows Group | 18,066        | 19,195 |
| Registered using Registrar Accreditation belonging to Resellers        | 6,438         | 6,235  |
| Total domain names under management                                    | 24,504        | 25,430 |

## OPPORTUNITIES, CHALLENGES AND RISKS

Our revenue is primarily realized in U.S. dollars and a major portion of our operating expenses are paid in Canadian dollars. Fluctuations in the exchange rate between the U.S. dollar and the Canadian dollar may have a material effect on our business, financial condition and results from operations. In particular, we may be adversely affected by a significant weakening of the U.S. dollar against the Canadian dollar on a quarterly and an annual basis. Our policy with respect to foreign currency exposure is to manage our financial exposure to certain foreign exchange fluctuations with the objective of neutralizing some or all of the impact of foreign currency exchange movements by entering into foreign exchange forward contracts to mitigate the exchange risk on a portion of our Canadian dollar exposure. We may not always enter into such forward contracts and such contracts may not always be available and economical for us. Additionally, the forward rates established by the contracts may be less advantageous than the market rate upon settlement.

### *Ting*

As an ISP, we have invested and expect to continue to invest in new fiber to the home ("FTTH") deployments in select markets in the United States. The investments are a reflection of our ongoing efforts to build FTTH network via public-private partnerships in communities we identify as having strong, unmet demand for FTTH services. Given the significant upfront build and operational investments for these FTTH deployments, there is risk that future technological and regulatory changes as well as competitive responses from incumbent local providers, may result in us not fully recovering these investments.

The communications industry continues to compete on the basis of network reach and performance, types of services and devices offered, and price.

### *Wavelo*

Wavelo launched as a proven asset for CSPs, with DISH using Wavelo's MONOS software to drive additional value within its Digital Operator Platform since early 2021. More recently, Ting Internet has also integrated Wavelo's ISOS software to enable faster subscriber growth and footprint expansion. With our external platform and professional services revenues concentrated to one customer in DISH, we are exposed to significant risk if we are unable to maintain this customer relationship or establish new relationships for any our Platforms in the future. Additionally, our revenues as a platform provider are directly tied to the subscriber volumes of DISH's MVNO or Mobile Network Operator ("MNO") networks, and our profitability is contingent on the ability of DISH to continue to add subscribers, either from organic growth or from migration off legacy systems, onto our platforms.

### *Tucows Domains*

The increased competition in the market for Internet services in recent years, which we expect will continue to intensify in the short and long term, poses a material risk for us. As new registrars are introduced, existing competitors expand service offerings and competitors offer price discounts to gain market share, we face pricing pressure, which can adversely impact our revenues and profitability. To address these risks, we have focused on leveraging the scalability of our infrastructure and our ability to provide proactive and attentive customer service to aggressively compete to attract new customers and to maintain existing customers.

Substantially all of our Tucows Domains revenue is derived from domain name registrations and related value-added services from wholesale and retail customers using our provisioning and management platforms. The market for wholesale registrar services is both price sensitive and competitive and is evolving with the introduction of new gTLDs, particularly for large volume customers, such as large web hosting companies and owners of large portfolios of domain names. We have a relatively limited ability to increase the pricing of domain name registrations without negatively impacting our ability to maintain or grow our customer base. Growth in Tucows Domains revenue is dependent upon our ability to continue to attract and retain customers by maintaining consistent domain name registration and value-added service renewal rates and to grow our customer relationships through refining, evolving and improving our provisioning platforms and customer service for both resellers and end-users. In addition, we also generate revenue through pay-per-click advertising and through the OpenSRS Domain Expiry Stream. The revenue associated with names sales and advertising has recently experienced flat to declining trends due to the uncertainty around the implementation of ICANN's New gTLD Program, lower traffic and advertising yields in the marketplace, which we expect to continue.

From time-to-time certain of our vendors provide us with market development funds to expand or maintain the market position for their services. Any decision by these vendors to cancel or amend these programs for any reason may result in payments in future periods not being commensurate with what we have achieved during past periods.

### ***Other opportunities, challenges and risks***

As described above, the Company is entitled to a long-term payment stream that is a function of the margin generated by the transferred subscribers over the 10-year term of the DISH Purchase agreement. This consideration structure may not prove to be successful or profitable in the long-term to us if the existing subscriber base churns at an above average rate. Additionally, given DISH controls the revenues and costs incurred associated with the acquired subscribers, there could arise a situation where profitability for the subscriber base is diminished either by lower price points or cost inflation. As part of the transactions contemplated by the DISH Purchase agreement, the Company retained a small number of customer accounts associated with one MNO agreement that was not reassigned to DISH at time of sale. We continue to be subject to the minimum revenue commitments previously agreed to with this excluded MNO agreement. The Company is able to continue adding customers under the excluded MNO network in order to meet the commitment. However, with no direct ability to change customer pricing and limited ability to renegotiate contract costs or significant terms, the Company may be unable to meet the minimum commitments with this MNO partner and could incur significant and recurring penalties until such a time that the contract is complete. These penalties would negatively impact our operational performance and financial results if enforced by the MNO. During the three months and nine months ended September 30, 2022, the Company was able to reverse the penalties previously accrued during the six months ended June 30, 2022, of \$0.7 million as a result of a successful negotiation with the MNO partner, deferring the impact of the penalties into Fiscal 2023 and beyond. The Company expects to incur penalties starting in Fiscal 2023 and thereafter until the contract is complete.

### **Critical Accounting Estimates**

The preparation of our consolidated financial statements in conformity with GAAP requires us to make estimates and judgements that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. There have been no material changes to the critical accounting estimates as previously disclosed in Part II, Item 7 of our 2021 Annual Report.

### **Current COVID-19 response and expected impacts**

The ongoing global COVID-19 pandemic continues to characterize Fiscal 2022 thus far, however the financial and operational impacts from COVID-19 on our business have been limited. Over the last two years, we've monitored the situation and its impacts on our business but have ultimately seen trends stabilize, with continued recovery in U.S. markets due to large-scale vaccination programs. Management continues to assess the impact regularly but expects limited financial and operational impact through the upcoming fiscal year, should the COVID-19 pandemic persist. While the spread of COVID-19 may eventually be contained or mitigated, there is no guarantee that a future outbreak will not occur as evidenced by numerous variants of the virus emerging. Since the onset of this pandemic in 2020, all employees who could conceivably work from home were and continue to be encouraged to do so. Since then we have transitioned to defining ourselves as a remote-first organization, and for the small group of employees who are unable to work from home, including our order fulfillment and Fiber installation teams, many of whom work in the field, they are encouraged to practice social distancing and to continue to follow hygiene best practices and safety protocols as outlined by the Centers for Disease Control and Prevention in connection with the COVID-19 pandemic. In 2020, the Ting team established an installation solution for our employees and customers that minimizes risks associated with person-to-person contact and they continue to effectively deploy this installation solution currently. We have also implemented a vaccination policy requiring those employees who work from a Company office, meet in person with customers or travel by plan or train for business purposes to be fully vaccinated.

We have not experienced any productivity issues, material resource constraints nor do we foresee requiring any material expenditures to continue to implement our business continuity plans described above. Likewise, we have not experienced nor do we foresee any future impacts to our liquidity position, credit risk, internal controls or impacts to our accounting policies as a result of the COVID-19 pandemic.

### **Inflation, rising interest rates and expected impacts**

The Company continues to operate in a challenging macro environment as inflation and interest rates continue to rise globally. The impact of these issues on our business will vary by geographic market and operating segment. We continue to monitor economic conditions closely, as well as segment revenues, cash position, cash flow from operations, interest rates and other factors. Across our three operating segments - Ting, Wavelo and Tucows Domains, personnel costs were impacted by wage inflation in the current period, with issued increases in excess of 5% to align with economic conditions and market rates. These increases were necessary in order to remain competitive to attract and retain the best talent. The Company continues to monitor and assess wage inflation and is managing it against offsets in hiring plans and contractor mix. Outside of wage inflation, the operating segment most impacted by inflation overall is Ting, as sustained levels of inflation increase our Fiber Network build costs across both materials and contracted labor. We continue to assess ways to reduce build costs through more efficient management of our build design, build efficiency and real-time tracking of build costs to more effectively manage total cost estimates against actual spends. We are also managing our significant vendor relationships closely to mitigate supply chain disruptions and ensure optimal pricing. However, there can be no assurance as to the effectiveness of our efforts to mitigate any impact of the current and future adverse economic conditions, and other unknown developments.

**RESULTS OF OPERATIONS FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2022 AS COMPARED TO THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2021****NET REVENUES*****Ting***

Ting and its subsidiaries - Cedar, and Simply Bits includes the provision of fixed high-speed Internet access services to select towns throughout the United States, with further expansion underway to both new and existing markets. Our primary sales channel is through the Ting website. The primary focus of this segment is to provide reliable Gigabit Internet services to consumer and business customers. Revenues are all generated in the U.S., have no fixed contract terms and are provided on a monthly basis, with unlimited bandwidth based on a fixed price.

The Company's billing cycle for all Ting Internet customers is computed based on the customer's activation date. Since consideration is collected before the service period, revenue is initially deferred and recognized as the Company performs its obligation to provide Internet access within each reporting period. In addition, revenues associated with the sale of Internet hardware to subscribers are recognized when title and risk of loss is transferred to the subscriber and shipment has occurred. Incentive marketing credits given to customers are recorded as a reduction of revenue.

In those cases, where payment is not received at the time of sale, revenue is not recognized until contract inception unless the collection of the related accounts receivable is reasonably assured. The Company records costs that reflect expected refunds, rebates and credit card charge-backs as a reduction of revenues at the time of the sale based on historical experiences and current expectations.

***Wavelo******Platform Services***

Tucows' Platform Services include the following full-service platforms from Wavelo, including MONOS, ISOS and our legacy Platypus ISP Billing software. Under each of these platforms there are a variety of solutions that support CSPs, including subscription and billing management, network orchestration and provisioning, and individual developer tools. Wavelo launches as a proven asset for CSPs, with DISH using Wavelo's MONOS software to drive additional value within its Digital Operator Platform since early 2021. More recently, Ting has also integrated Wavelo's ISOS software to enable faster subscriber growth and footprint expansion. Wavelo's customers are billed monthly, on a postpaid basis. The monthly fees are variable, based on the volume of their subscribers utilizing the platform during a given month, to which minimums may apply. Customers may also be billed fixed platform fees and granted fixed credits as part of the consideration for long-term contracts. Consideration received is allocated to platform services and bundled professional services and recognized as each service obligation is fulfilled. Any fixed fees for Wavelo are recognized into revenue evenly over the service period, while variable usage fees are recognized each month as they are consumed. Professional services revenue is recognized as the hours of professional services granted to the customer are used or expire. When consideration for these platform services is received before the service is delivered, the revenue is initially deferred and recognized only as the Company performs its obligation to provide services. Likewise, if platform services are delivered before the Company has the unconditional right to invoice the customer, revenue is recognized as a Contract Asset.

***Other Professional Services***

This revenue stream includes any other professional services earned in connection with Tucows' new Wavelo business from the provision of standalone technology services development work. These are billed to our customers monthly at set and established rates for services provided in period. The Company recognizes revenue over this new revenue stream as the Company satisfies its obligations to provide professional services.

***Tucows Domains******Wholesale - Domain Services***

Domain registration contracts, which can be purchased for terms of one to ten years, provide our resellers and retail registrant customers with the exclusive right to a personalized internet address from which to build an online presence. The Company enters into domain registration contracts in connection with each new, renewed and transferred-in domain registration. At the inception of the contract, the Company charges and collects the registration fee for the entire registration period. Though fees are collected upfront, revenue from domain registrations are recognized rateably over the registration period as domain registration contracts contain a 'right to access' license of IP, which is a distinct performance obligation measured over time. The registration period begins once the Company has confirmed that the requested domain name has been appropriately recorded in the registry under contractual performance standards.

Historically, our wholesale domain service has constituted the largest portion of our business and encompasses all of our services as an accredited registrar related to the registration, renewal, transfer and management of domain names. In addition, this service fuels other revenue categories as it often is the initial service for which a reseller will engage us, enabling us to follow on with other services and allowing us to add to our portfolio by purchasing names registered through us upon their expiration. Tucows Domains will continue to be the largest portion of our business and will further fuel our ability to sell add-on services.

The Company is an ICANN accredited registrar. Thus, the Company is the primary obligor with our reseller and retail registrant customers and is responsible for the fulfillment of our registrar services to those parties. As a result, the Company reports revenue in the amount of the fees we receive directly from our reseller and retail registrant customers. Our reseller customers maintain the primary obligor relationship with their retail customers, establish pricing and retain credit risk to those customers. Accordingly, the Company does not recognize any revenue related to transactions between our reseller customers and their ultimate retail customers.



### Wholesale – Value-Added Services

We derive revenue from domain related value-added services like digital certifications, WHOIS privacy and hosted email and by providing our resellers and retail registrant customers with tools and additional functionality to be used in conjunction with domain registrations. All domain related value-added services are considered distinct performance obligations which transfer the promised service to the customer over the contracted term. Fees charged to customers for domain related value-added services are collected at the inception of the contract, and revenue is recognized on a straight-line basis over the contracted term, consistent with the satisfaction of the performance obligations.

We also derive revenue from other value-added services, which primarily consists of proceeds from the OpenSRS, eNom and Ascio domain expiry streams.

### Retail

We derive revenues mainly from Hover and eNom's retail properties through the sale of retail domain name registration and email services to individuals and small businesses. The retail segment also includes the sale of the rights to its portfolio of surname domains used in connection with our Realnames email service and Linux hosting services for websites through our Exact Hosting brand.

### Tucows Corporate - Mobile Services and Eliminations

Although we still provide mobile telephony services to a small subset of customers retained through the Ting Mobile brand as part of the DISH Purchase Agreement executed in Fiscal 2020; this revenue stream no longer represents the Company's strategic focus going forward. Instead we have transitioned towards being a Wavelo provider for CSPs globally. Where these retail mobile services revenues were previously disclosed as part of a Mobile Services segment in the prior year, effective January 1, 2022 we have decided to exclude retail telephony services and transition services revenues from segment EBITDA results as they are no longer centrally managed and not monitored by or reported to our CEO by segment.

Ting Mobile wireless usage contracts grant customers access to standard talk, text and data mobile services. Ting Mobile contracts are billed based on the customer's selected rate plan, which can either be usage based or an unlimited plan. All rate plan options are charged to customers on a postpaid, monthly basis at the end of their billing cycle. All future revenues associated with Retail Mobile Services stream will only be for this subset of customers retained by the Company, as mentioned above. Ting Mobile services are primarily contracted through the Ting website, for one month at a time and contain no commitment to renew the contract following each customer's monthly billing cycle. The Company's billing cycle for all Ting Mobile customers is computed based on the customer's activation date. In order to recognize revenue as the Company satisfies its obligations, we compute the amount of revenues earned but not billed from the end of each billing cycle to the end of each reporting period. In addition, revenues associated with the sale of wireless devices and accessories are recognized when title and risk of loss is transferred to the customer and shipment has occurred. Incentive marketing credits given to customers are recorded as a reduction of revenue.

These Mobile Services revenue streams also includes transitional services provided to DISH. These are billed monthly at set and established rates for services provided in period and include the provision of sales, marketing, customer support, order fulfillment, and data analytics related to the legacy customer base sold to DISH. The Company recognizes revenue as the Company satisfies its obligations to provide professional services. The Company expects transitional services revenues to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH.

As a form of consideration for the sale of the customer relationships, the Company receives a payout on the margin associated with the legacy customer base sold to DISH, over a period of 10 years. This has been classified as Other Income and not considered revenue in the current period.

The following table presents our net revenues, by revenue source (*Dollar amounts in thousands of U.S. dollars*):

|                                                      | For the Three Months Ended<br>September 30, |           | For the Nine Months Ended<br>September 30, |            |
|------------------------------------------------------|---------------------------------------------|-----------|--------------------------------------------|------------|
|                                                      | 2022                                        | 2021      | 2022                                       | 2021       |
| <i>(Dollar amounts in thousands of U.S. dollars)</i> |                                             |           |                                            |            |
| <b>Ting:</b>                                         |                                             |           |                                            |            |
| Fiber Internet Services                              | \$ 10,946                                   | \$ 6,391  | \$ 30,955                                  | \$ 17,021  |
| <b>Wavelo:</b>                                       |                                             |           |                                            |            |
| Platform Services                                    | 4,048                                       | 3,845     | 18,115                                     | 7,217      |
| Other Professional Services                          | -                                           | -         | 1,750                                      | -          |
| Total Wavelo                                         | 4,048                                       | 3,845     | 19,865                                     | 7,217      |
| <b>Tucows Domains:</b>                               |                                             |           |                                            |            |
| Wholesale                                            |                                             |           |                                            |            |
| Domain Services                                      | 46,985                                      | 47,080    | 140,800                                    | 141,954    |
| Value Added Services                                 | 4,883                                       | 4,862     | 16,129                                     | 15,424     |
| Total Wholesale                                      | 51,868                                      | 51,942    | 156,929                                    | 157,378    |
| Retail                                               | 8,413                                       | 8,787     | 25,961                                     | 26,837     |
| Total Tucows Domains                                 | 60,281                                      | 60,729    | 182,890                                    | 184,215    |
| <b>Tucows Corporate:</b>                             |                                             |           |                                            |            |
| Mobile services and eliminations                     | 2,775                                       | 4,928     | 8,523                                      | 13,408     |
|                                                      | \$ 78,050                                   | \$ 75,893 | \$ 242,233                                 | \$ 221,861 |
| Increase over prior period                           | \$ 2,157                                    |           | \$ 20,372                                  |            |
| Increase - percentage                                | 3%                                          |           | 9%                                         |            |



The following table presents our net revenues, by revenue source, as a percentage of total net revenues (*Dollar amounts in thousands of U.S. dollars*):

|                                                      | For the Three Months Ended<br>September 30, |      | For the Nine Months Ended<br>September 30, |      |
|------------------------------------------------------|---------------------------------------------|------|--------------------------------------------|------|
|                                                      | 2022                                        | 2021 | 2022                                       | 2021 |
| <i>(Dollar amounts in thousands of U.S. dollars)</i> |                                             |      |                                            |      |
| <b>Ting:</b>                                         |                                             |      |                                            |      |
| Fiber Internet Services                              | 14%                                         | 8%   | 13%                                        | 8%   |
| <b>Wavelo:</b>                                       |                                             |      |                                            |      |
| Platform Services                                    | 5%                                          | 5%   | 7%                                         | 3%   |
| Other Professional Services                          | 0%                                          | 0%   | 1%                                         | 0%   |
| Total Wavelo                                         | 5%                                          | 5%   | 8%                                         | 3%   |
| <b>Tucows Domains:</b>                               |                                             |      |                                            |      |
| Wholesale                                            |                                             |      |                                            |      |
| Domain Services                                      | 60%                                         | 62%  | 59%                                        | 64%  |
| Value Added Services                                 | 6%                                          | 6%   | 7%                                         | 7%   |
| Total Wholesale                                      | 66%                                         | 68%  | 66%                                        | 71%  |
| Retail                                               | 11%                                         | 12%  | 11%                                        | 12%  |
| Total Tucows Domains                                 | 77%                                         | 80%  | 77%                                        | 83%  |
| <b>Tucows Corporate:</b>                             |                                             |      |                                            |      |
| Mobile services and eliminations                     | 4%                                          | 7%   | 2%                                         | 6%   |
|                                                      | 100%                                        | 100% | 100%                                       | 100% |

Total net revenues for the three months ended September 30, 2022 increased by \$2.2 million, or 3%, to \$78.1 million from \$75.9 million when compared to the three months ended September 30, 2021. The three-month increase in net revenue was driven by Ting which had a revenue increase of \$4.6 million in the current period from the attraction of additional customers to Ting from the continued buildout of our Fiber network footprint across the United States. This increase was furthered by Wavelo, as a result of increased MONOS platform revenues (both fixed and variable) fees earned from the migration of additional subscribers onto our new platform. Wavelo accounted for a \$0.2 million increase to total net revenues in the current period. The increases these two segments experienced were partially offset by reduced revenues from Mobile Services and eliminations of \$2.2 million, attributable to decreased transitional services revenues; as well as reduced revenues from our Tucows Domains segment of \$0.4 million from the continued normalization of domain name registration growth and renewal rates from those observed as a result of the COVID-19 pandemic in prior years.

Total net revenues for the nine months ended September 30, 2022 increased by \$20.3 million, or 9% to \$242.2 million from \$221.9 million when compared to the nine months ended September 30, 2021. The nine-month increase in net revenue was driven by Ting which had a revenue increase of \$13.9 million in the current period from the attraction of additional customers to Ting from the continued buildout of our Fiber network footprint across the United States. This increase was furthered by Wavelo, as a result of increased MONOS platform revenues (both fixed and variable) fees earned from the migration of additional subscribers onto our new platform, as well as incremental professional services revenues. Wavelo accounted for a \$12.6 million increase to total net revenues in the current period. The increases these two segments experienced were partially offset by reduced revenues from Mobile Services and eliminations of \$4.9 million, attributable to decreased transitional services revenues; as well as reduced revenues from our Tucows Domains segment of \$1.3 million from the continued normalization of domain name registration growth and renewal rates from those observed as a result of the COVID-19 pandemic in prior years.

Deferred revenue at September 30, 2022 decreased by \$0.7 million to \$147.1 million from \$147.8 million at December 31, 2021. This was primarily driven by Tucows Domains, accounting for \$0.6 million of the decrease which is due to the decrease in current period billings for domain name registrations and declining domain names under management. Additionally, Wavelo saw a decrease of \$0.4 million, specifically related to Other Professional Services revenues for standalone technology services development work with DISH, which we defer until such time as that work is complete and we've satisfied our obligations to provide the professional services. These other professional services were completed in the current period and thus recognized out of previously deferred revenues. These decreases were partially offset by a small increase from Ting of \$0.3 million, reflective of the continued growth in customer base and billings of that segment relative to December 31, 2021.

No customer accounted for more than 10% of total net revenue during the three and nine months ended September 30, 2022 or the three and nine months ended September 30, 2021. DISH accounted for 37% of total accounts receivable as at September 30, 2022 and 46% of total accounts receivable as at December 31, 2021. Though a significant portion of the Company's Tucows Domains revenues are prepaid by our customers, where the Company does collect receivables, significant management judgment is required at the time revenue is recorded to assess whether the collection of the resulting receivables is reasonably assured. On an ongoing basis, we assess the ability of our customers to make required payments. Based on this assessment, we expect the carrying amount of our outstanding receivables, net of allowance for doubtful accounts, to be fully collected.

### *Ting*

Ting generated \$10.9 million in net revenue during the three months ended September 30, 2022, up \$4.5 million or 70% compared to the three months ended September 30, 2021. This growth is driven by subscriber growth across our Fiber network relative to the three months ended September 30, 2021, as well as the continued expansion of our Ting Internet footprint to new Ting towns throughout the United States. Included in this current period increase is \$2.2 million of revenues attributed to the prior period acquisition of Simply Bits, which closed in the fourth quarter of Fiscal 2021.

Ting generated \$31 million in net revenue during the nine months ended September 30, 2022, up \$14 million or 82% compared to the nine months ended September 30, 2021. This growth is driven by subscriber growth across our Fiber network relative to the nine months ended September 30, 2021, as well as the continued expansion of our Ting Internet footprint to new Ting towns throughout the United States. Included in this current period increase is \$6.8 million of revenues attributed to the prior period acquisition of Simply Bits, which closed in the fourth quarter of Fiscal 2021.

As of September 30, 2022, Ting Internet had access to 90,000 owned infrastructure serviceable addresses, 19,000 partner infrastructure serviceable addresses and 33,000 active subscribers under its management; compared to having access to 68,000 owned infrastructure serviceable addresses, 14,000 partner infrastructure serviceable addresses and 23,000 active subscribers under its management as of September 30, 2021. These figures include the increase in serviceable addresses and subscribers attributable to the acquisition of Cedar in January 2020, but exclude those of Simply Bits.

### *Wavelo*

#### *Platform Services*

Net revenues from Wavelo for the three months ended September 30, 2022 increased by \$0.2 million to \$4 million as compared to the three months ended September 30, 2021. This is driven from increased MONOS platform revenues (both fixed and variable) fees earned from the migration of additional DISH subscribers, from their Boost Mobile brand onto our new platform. The increased platform fees are partially offset by a reduction of revenues related to the amortization of the related contract asset with DISH. The Company expects the contract asset to continue to amortize against revenue through the remainder of Fiscal 2022 and thereafter as we continue to fulfill the performance obligations of the contract. Our full-service platforms support CSPs with subscription and billing management, network orchestration and provisioning, and individual developer tools. Wavelo launched as a proven asset for CSPs, with DISH using Wavelo's MONOS software to drive additional value within its Digital Operator Platform since early 2021. More recently, Ting Internet has also integrated Wavelo's ISOS software to enable faster subscriber growth and footprint expansion. Any intercompany ISOS revenues earned from Ting Internet are eliminated upon consolidation.

Net revenues from Wavelo for the nine months ended September 30, 2022 increased by \$10.9 million to \$18.1 million as compared to the nine months ended September 30, 2021. This is driven from increased MONOS platform revenues (both fixed and variable) fees earned from the migration of additional DISH subscribers, from their Boost Mobile brand onto our new platform. The increased platform fees are partially offset by a reduction of revenues related to the amortization of the related contract asset with DISH. The Company expects the contract asset to continue to amortize against revenue through the remainder of Fiscal 2022 and thereafter as we continue to fulfill the performance obligations of the contract. Our full-service platforms support CSPs with subscription and billing management, network orchestration and provisioning, and individual developer tools. Wavelo launched as a proven asset for CSPs, with DISH using Wavelo's MONOS software to drive additional value within its Digital Operator Platform since early 2021. More recently, Ting Internet has also integrated Wavelo's ISOS software to enable faster subscriber growth and footprint expansion. Any intercompany ISOS revenues earned from Ting Internet are eliminated upon consolidation.

#### *Other Professional Services*

Net revenues from Other Professional Services for the three months ended September 30, 2022 and September 30, 2021 were nil. There was no standalone technology services development work for DISH in the current period or prior period.

Net revenues from Other Professional Services for the nine months ended September 30, 2022 increased to \$1.8 million as compared to the nine months ended September 30, 2021. This increase was the result of completion of select standalone technology services development work for DISH in the current period, where nine months ended September 30, 2021 did not have any revenues from comparable services.

## ***Tucows Domains***

### ***Wholesale - Domain Services***

During the three months ended September 30, 2022, Wholesale domain services net revenue decreased by \$0.1 million to \$47 million, when compared to the three months ended September 30, 2021. Decreases from Wholesale domain registrations were driven from the continued normalization of domain name registration growth and slowed renewal rates from those observed as a result of the COVID-19 pandemic in prior years.

During the nine months ended September 30, 2022, Wholesale domain services net revenue decreased by \$1.2 million to \$140.8 million, when compared to the nine months ended September 30, 2021. Decreases from Wholesale domain registrations were driven from the continued normalization of domain name registration growth and slowed renewal rates from those observed as a result of the COVID-19 pandemic in prior years.

Total domains that were managed under the OpenSRS, eNom, EPAG, and Ascio domain services decreased by 0.9 million domain names to 24.5 million as of September 30, 2022, when compared to 25.4 million at September 30, 2021. The decrease in domains under management came largely from eNom, with smaller decreases from OpenSRS and the European brands, Ascio and EPAG.

### ***Wholesale - Value Added Services***

During the three months ended September 30, 2022, value-added services net revenue remained flat at \$4.9 million compared to the three months ended September 30, 2021.

During the nine months ended September 30, 2022, value-added services revenue increased by \$0.7 million to \$16.1 million compared to the nine months ended September 30, 2021. The increase was primarily driven by increased expiry revenue of \$1.1 million from the OpenSRS, eNom, Ascio brands and their respective domain expiry streams, and was partially offset by other small decreases in Digital Certificates, Email and Other revenues of \$0.4 million.

### ***Retail***

During the three months ended September 30, 2022, retail domain services net revenue decreased by \$0.4 million or 5% to \$8.4 million compared to the three months ended September 30, 2021. This was driven by decreased revenues related to retail domain name registrations of \$0.4 million and partially offset by a small increase in Exact Hosting revenues of less than \$0.1 million.

During the nine months ended September 30, 2022, retail domain services net revenue decreased by \$0.9 million or 3% to \$26.0 million compared to the nine months ended September 30, 2021. This was driven by decreased revenues related to retail domain name registrations of \$1.3 million and partially offset by an outsized domain name portfolio sale of \$0.2 million and a small increase in Exact Hosting revenues of \$0.2 million.

## ***Tucows Corporate***

Net revenues from Tucows Corporate for the three months ended September 30, 2022 decreased by \$2.2 million or 44% to \$2.8 million as compared to the three months ended September 30, 2021. This decrease was driven by decreased transitional services of \$2.2 million, notably from a decreased level of customer support and marketing services provided to DISH in connection with the legacy Ting Mobile customer base. The Company expects transitional services revenues to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH. This decrease was partially offset by an increase in revenues of less than \$0.2 million associated with the mobile telephony services and device revenues from the small group of customers retained by the Company as part of the DISH Purchase Agreement. Revenues increased as a result of the organic subscriber growth we experienced relative to the three months ended September 30, 2021. These decreases were partially offset by increased corporate eliminations of \$0.2 million as a result of the revenues associated with ISOS platform billing between Wavelo and Ting, which began in Fiscal 2022.

Net revenues from Tucows Corporate for the nine months ended September 30, 2022 decreased by \$4.9 million or 37% to \$8.5 million as compared to the nine months ended September 30, 2021. This decrease was driven by decreased transitional services of \$4.9 million, notably from a decreased level of customer support and marketing services provided to DISH in connection with the legacy Ting Mobile customer base. The Company expects transitional services revenues to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH. This decrease was partially offset by an increase in revenues of \$0.5 million associated with the mobile telephony services and device revenues from the small group of customers retained by the Company as part of the DISH Purchase Agreement. Revenues increased as a result of the organic subscriber growth we experienced through Fiscal 2021, brought about by new unlimited usage rate plans introduced in late Fiscal 2020. Additionally, corporate eliminations increased by \$0.5 million as a result of the revenues associated with ISOS platform billing between Wavelo and Ting, which began in Fiscal 2022.

## **COST OF REVENUES**

### ***Ting***

Cost of revenues primarily includes the costs for provisioning high speed Internet access for Ting and its subsidiaries - Cedar, and Simply Bits, which is comprised of network access fees paid to third-parties to use their network, leased circuit costs to directly support enterprise customers, the personnel and related expenses (net of capitalization) related to the physical planning, design, construction and build out of the physical Fiber network and as well as personnel and related expenses (net of capitalization) related to the installation, repair, maintenance and overall field service delivery of the Fiber business. Hardware costs include the cost of equipment sold to end customers, including routers, ONTs, and IPTV products, and any inventory adjustments on this inventory. Other costs include field vehicle expenses, and small sundry equipment and supplies consumed in building the Fiber network.

## ***Wavelo***

### ***Platform Services***

Cost of revenues, if any, to provide the MONOS, ISOS platforms and our legacy Platypus ISP Billing software services including network access, provisioning and billing services for CSPs. This includes the amortization of any capitalized contract fulfillment costs over the period consistent with the pattern of transferring network access, provisioning and billing services to which the cost relates. Additionally, this includes any fees paid to third-party service providers primarily for printing services in connection with the Platypus ISP Billing software.

### ***Other Professional Services***

Cost of revenues to provide standalone technology services development work to our CSP customers to help support their businesses. This includes any personnel and contractor fees for any client service resources retained by the Company. Only a subset of the Company's employee base provides professional services to our customers. This cost reflects that group of resources.

## ***Tucows Domains***

### ***Wholesale - Domain Services***

Cost of revenues for domain registrations represents the amortization of registry and accreditation fees on a basis consistent with the recognition of revenues from our customers, namely rateably over the term of provision of the service. Registry fees, the primary component of cost of revenues, are paid in full when the domain is registered, and are initially recorded as prepaid domain registry fees. This accounting treatment reasonably approximates a recognition pattern that corresponds with the provision of the services during the period. Market development funds that do not represent a payment for distinct goods or services provided by the Company, and thus do not meet the criteria for revenue recognition under ASU 2014-09, are reflected as cost of goods sold and are recognized as earned.

### ***Wholesale - Value-Added Services***

Costs of revenues for value-added services include licensing and royalty costs related to the provisioning of certain components of related to hosted email and fees paid to third-party hosting services. Fees payable for trust certificates are amortized on a basis consistent with the provision of service, generally one year, while email hosting fees and monthly printing fees are included in cost of revenues in the month they are incurred.

### ***Retail***

Costs of revenues for our provision and management of Internet services through our retail sites, Hover.com and the eNom branded sites, include the amortization of registry fees on a basis consistent with the recognition of revenues from our customers, namely rateably over the term of provision of the service. Registry fees, the primary component of cost of revenues, are paid in full when the domain is registered, and are recorded as prepaid domain registry fees and are expensed rateably over the renewal term. Costs of revenues for our surname portfolio represent the amortization of registry fees for domains added to our portfolio over the renewal period, which is generally one year, the value attributed under intangible assets to any domain name sold and any impairment charges that may arise from our assessment of our domain name intangible assets.

## ***Tucows Corporate***

Cost of revenues for Retail Mobile Services includes the costs of provisioning mobile services, which is primarily our customers' voice, messaging, data usage provided by our MNO partner, and the costs of providing mobile phone hardware, which is the cost of mobile phone devices and SIM cards sold to our customers, order fulfillment related expenses, and inventory write-downs. Included in the costs of provisioning mobile services is any penalties associated with the minimum commitments with our MNO partner.

These Mobile Services costs also include the personnel and related costs of transitional services provided to DISH. These are billed monthly at set and established rates for services provided in period and include the provision of sales, marketing, customer support, order fulfillment, and data analytics related to the legacy customer base sold to DISH. The Company recognizes costs as the Company satisfies its obligations to provide professional services. The Company expects transitional services costs to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH.

### ***Network expenses***

Network expenses include personnel and related expenses related to the core technologies, site reliability engineering and network operations, IT infrastructure and supply chain teams that support our various business segments. It also includes network depreciation and amortization, communication and productivity tool costs, and equipment maintenance costs. Communication and productivity tool costs includes collaboration, customer support, bandwidth, co-location and provisioning costs we incur to support the supply of all our services.

The following table presents our cost of revenues, by revenue source:

|                                                      | For the Three Months Ended<br>September 30, |           | For the Nine Months Ended<br>September 30, |            |
|------------------------------------------------------|---------------------------------------------|-----------|--------------------------------------------|------------|
|                                                      | 2022                                        | 2021      | 2022                                       | 2021       |
| <i>(Dollar amounts in thousands of U.S. dollars)</i> |                                             |           |                                            |            |
| <b>Ting:</b>                                         |                                             |           |                                            |            |
| Fiber Internet Services                              | \$ 4,290                                    | \$ 3,632  | \$ 12,746                                  | \$ 9,247   |
| <b>Wavelo:</b>                                       |                                             |           |                                            |            |
| Platform Services                                    | 235                                         | 140       | 622                                        | 338        |
| Other Professional Services                          | -                                           | -         | 1,632                                      | -          |
| Total Wavelo                                         | 235                                         | 140       | 2,254                                      | 338        |
| <b>Tucows Domains:</b>                               |                                             |           |                                            |            |
| Wholesale                                            |                                             |           |                                            |            |
| Domain Services                                      | 37,393                                      | 37,108    | 110,728                                    | 110,593    |
| Value Added Services                                 | 613                                         | 690       | 1,912                                      | 1,867      |
| Total Wholesale                                      | 38,006                                      | 37,798    | 112,640                                    | 112,460    |
| Retail                                               | 4,105                                       | 4,455     | 12,383                                     | 13,354     |
| Total Tucows Domains                                 | 42,111                                      | 42,253    | 125,023                                    | 125,814    |
| <b>Tucows Corporate:</b>                             |                                             |           |                                            |            |
| Mobile services and eliminations                     | 1,666                                       | 3,515     | 7,000                                      | 9,461      |
| <b>Network Expenses:</b>                             |                                             |           |                                            |            |
| Network, other costs                                 | 4,244                                       | 3,445     | 13,188                                     | 10,295     |
| Network, depreciation of property and equipment      | 7,136                                       | 4,622     | 19,620                                     | 12,344     |
| Network, amortization of intangible assets           | 378                                         | 21        | 1,134                                      | 344        |
| Network, impairment of property and equipment        | 3                                           | 241       | 30                                         | 302        |
|                                                      | 11,761                                      | 8,329     | 33,972                                     | 23,285     |
|                                                      | \$ 60,063                                   | \$ 57,869 | \$ 180,995                                 | \$ 168,145 |
| Increase over prior period                           | \$ 2,194                                    |           | \$ 12,850                                  |            |
| Increase - percentage                                | 4%                                          |           | 8%                                         |            |

The following table presents our cost of revenues, as a percentage of total cost of revenues for the periods presented:

|                                                 | For the Three Months Ended<br>September 30, |      | For the Nine Months Ended<br>September 30, |      |
|-------------------------------------------------|---------------------------------------------|------|--------------------------------------------|------|
|                                                 | 2022                                        | 2021 | 2022                                       | 2021 |
| <b>Ting:</b>                                    |                                             |      |                                            |      |
| Fiber Internet Services                         | 7%                                          | 6%   | 7%                                         | 5%   |
| <b>Wavelo:</b>                                  |                                             |      |                                            |      |
| Platform Services                               | 0%                                          | 0%   | 0%                                         | 0%   |
| Other Professional Services                     | 0%                                          | 0%   | 1%                                         | 0%   |
| Total Wavelo                                    | 0%                                          | 0%   | 1%                                         | 0%   |
| <b>Tucows Domains:</b>                          |                                             |      |                                            |      |
| Wholesale                                       |                                             |      |                                            |      |
| Domain Services                                 | 62%                                         | 65%  | 61%                                        | 67%  |
| Value Added Services                            | 1%                                          | 1%   | 1%                                         | 1%   |
| Total Wholesale                                 | 63%                                         | 66%  | 62%                                        | 68%  |
| Retail                                          | 7%                                          | 8%   | 7%                                         | 8%   |
| Total Tucows Domains                            | 70%                                         | 74%  | 69%                                        | 76%  |
| <b>Tucows Corporate:</b>                        |                                             |      |                                            |      |
| Mobile services and eliminations                | 3%                                          | 6%   | 4%                                         | 6%   |
| <b>Network Expenses:</b>                        |                                             |      |                                            |      |
| Network, other costs                            | 7%                                          | 6%   | 7%                                         | 6%   |
| Network, depreciation of property and equipment | 12%                                         | 8%   | 11%                                        | 7%   |
| Network, amortization of intangible assets      | 1%                                          | 0%   | 1%                                         | 0%   |
| Network, impairment of property and equipment   | 0%                                          | 0%   | 0%                                         | 0%   |
|                                                 | 20%                                         | 14%  | 19%                                        | 13%  |
|                                                 | 100%                                        | 100% | 100%                                       | 100% |

Total cost of revenues for the three months ended September 30, 2022, increased by \$2.2 million, or 4%, to \$60.1 million from \$57.9 million in the three months ended September 30, 2021. The three-month increase in cost of revenues was driven by a \$3.4 million increase in Network Expenses. The increase from Network Expenses is a result of the expansion of the Company's increased network infrastructure associated with the continuing expansion of the Ting Internet network footprint, the ramp up of Wavelo's MONOS and ISOS platforms, as well as increased communication and productivity tool costs across our operating segments. Another contributing factor was a \$0.7 million increase from Ting. As discussed above in the Net Revenues section, Ting has continued to add both serviceable addresses and active subscriptions relative to the three months ended September 30, 2021. Additionally, we experienced an increase from Wavelo of less than \$0.1 million, driven by the increased amortization of capitalized contract fulfillment costs. These increases were partially offset by a \$1.8 million decrease related to Tucows Corporate and \$0.1 million from Tucows Domains. The decrease in costs for Tucows Corporate was driven by decreased transitional services costs from the provision of less transitional services to DISH in the current period. The decrease in costs for Tucows Domains is aligned with the reduced net revenues discussed above in the Net Revenues section and reduction in domains under management in the current period.

Total cost of revenues for the nine months ended September 30, 2022, increased by \$12.9 million, or 8%, to \$181 million from \$168.1 million in the nine months ended September 30, 2021. The nine-month increase in cost of revenues was driven by a \$10.7 million increase in Network Expenses. The increase from Network Expenses is a result of the expansion of the Company's increased network infrastructure associated with the continuing expansion of the Ting Internet network footprint, the ramp up of Wavelo's MONOS and ISOS platforms, as well as increased communication and productivity tool costs across our operating segments. Another contributing factor was a \$3.5 million increase from Ting. As discussed above in the Net Revenues section, Ting has continued to add both serviceable addresses and active subscriptions relative to the nine months ended September 30, 2021. Additionally, we experienced a \$1.9 million increase from Wavelo, driven by the completion of select standalone technology services development work for DISH in the current period. These increases were partially offset by a decrease of less than \$0.8 million related to Tucows Domains and a \$2.5 million decrease related to Tucows Corporate. The decrease in costs for Tucows Domains is aligned with the reduced net revenues discussed above in the Net Revenues section and reduction in domains under management in the current period. The decrease related to Tucows Corporate is also driven by decreased transitional services costs from the provision of less transitional services to DISH in the current period.

Deferred costs of fulfillment as of September 30, 2022 decreased by \$0.8 million, or 1%, to \$111.9 million from \$112.7 million at December 31, 2021. This decrease was primarily driven by Wavelo of \$1.6 million, related to the completion of Other Professional Services discussed above for standalone technology services development work with DISH. As these professional services were completed in the current period, the deferred costs to fulfill those services were amortized into costs of revenues. This decrease was partially offset by an increase from Tucows Domains of \$0.8 million, which is due to increasing registry costs for domain name registrations and service renewals since December 31, 2021.

### ***Ting***

During the three months ended September 30, 2022, costs related to provisioning high speed Internet access increased \$0.7 million or 19%, to \$4.3 million as compared to \$3.6 million during three months ended September 30, 2021. The increase in costs were primarily driven by increased direct costs, bandwidth and colocation costs related to the continued expansion of the Ting Fiber network. Included in this current period increase is \$0.7 million of costs of revenues attributed to the prior period acquisition of Simply Bits, which closed in the fourth quarter of Fiscal 2021.

During the nine months ended September 30, 2022, costs related to provisioning high speed Internet access increased \$3.5 million or 38%, to \$12.7 million as compared to \$9.2 million during nine months ended September 30, 2021. The increase in costs were primarily driven by increased direct costs, bandwidth and colocation costs related to the continued expansion of the Ting Fiber network. Included in this current period increase is \$1.7 million of costs of revenues attributed to the prior period acquisition of Simply Bits, which closed in the fourth quarter of Fiscal 2021.

### ***Wavelo***

#### ***Platform Services***

Cost of revenues from Wavelo for the three months ended September 30, 2022 increased \$0.1 million or 68%, to \$0.2 million as compared to \$0.1 million for the three months ended September 30, 2021. Costs incurred are driven by the amortization of previously capitalized costs incurred to fulfill the DISH Master Services Agreement ("MSA") over the term of the agreement. The continued incurrence of additional costs to fulfill the contract have resulted in increased amortization in the current period relative to the fixed term of the agreement.

Cost of revenues from Wavelo for the nine months ended September 30, 2022 increased \$0.3 million or 100%, to \$0.6 million as compared to \$0.3 million for the nine months ended September 30, 2021. Costs incurred are driven by the amortization of previously capitalized costs incurred to fulfill the DISH MSA over the term of the agreement. The continued incurrence of additional costs to fulfill the contract have resulted in increased amortization in the current period relative to the fixed term of the agreement.

*Other Professional Services*

Cost of revenues from Other Professional Services for the three months ended September 30, 2022 and September 30, 2021 were nil. There was no standalone technology services development work for DISH in the current period or prior period.

Cost of revenues from Other Professional Services for the nine months ended September 30, 2022 increased to \$1.6 million as compared to nil for the nine months ended September 30, 2021. Costs incurred represent the personnel and related expenses of employees and contractors providing professional services to DISH. The increase in Other Professional Services costs relative to the prior period was a result of the completion of select standalone technology services development work for DISH in the current period. No comparable costs were incurred in the prior period.

***Tucows Domain***

*Wholesale - Domain Services*

Costs for Wholesale domain services for the three months ended September 30, 2022 increased by \$0.3 million or 1%, to \$37.4 million, as compared to \$37.1 million for the three months ended September 30, 2021. The increase is driven by the prior period including significant registry rebates, standard cost and hedging adjustments, partially offset by decreased registration costs aligned with the discussion above in the Net Revenue section associated with the continued normalization of domain name registrations, slowed renewal rates and reduction in domains under management in the current period.

Costs for Wholesale domain services for the nine months ended September 30, 2022 increased by \$0.1 million or less than 1%, to \$110.7 million, as compared to \$110.6 million for the nine months ended September 30, 2021. The increase is driven by prior period including significant registry rebates, standard cost and hedging adjustments earned from the strong performance and additions to domains under management as a result of the COVID-19 pandemic during Fiscal 2020. Limited comparable rebates and adjustments were earned from registries in the current period. This increase was partially offset by decreased registration costs aligned with the discussion above in the Net Revenue section associated with the continued normalization of domain name registrations, slowed renewal rates and reduction in domains under management in the current period.

*Wholesale - Value-Added Services*

Costs for wholesale value-added services for the three months ended September 30, 2022 decreased by \$0.1 million or 11%, to \$0.6 million, as compared to \$0.7 million for the three months ended September 30, 2021. This decrease was driven by decreased costs related to Digital Certificates.

Costs for wholesale value-added services for the nine months ended September 30, 2022 remained flat at \$1.9 million for the nine months ended September 30, 2021.

*Retail*

Costs for retail domain services for the three months ended September 30, 2022 decreased by \$0.4 million or 8%, to \$4.1 million, as compared to \$4.5 million for the three months ended September 30, 2021. This was driven by decreased costs related to retail domain name registrations of \$0.3 million from lower retail registrations and furthered by a small decrease in Exact Hosting cost of revenues of less than \$0.1 million.

Costs for retail domain services for the nine months ended September 30, 2022 decreased by \$1.0 million or 7%, to \$12.4 million, as compared to \$13.4 million for the nine months ended September 30, 2021. This was driven by decreased costs related to retail domain name registrations of \$0.9 million from lower retail registrations and furthered by a small decrease in domain name portfolio costs of less than \$0.1 million.



### Tucows Corporate

Cost of revenues from Tucows Corporate for the three months ended September 30, 2022 decreased by \$1.8 million or 53%, to \$1.7 million from \$3.5 million in the three months ended September 30, 2021. Consistent with the above discussion around net revenues, this was driven by decreased transitional services costs of \$1.4 million, notably from a decreased level of customer support and marketing services provided to DISH in connection with the legacy Ting Mobile customer base. The Company expects transitional services costs of revenues to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH. This decrease was furthered by a decrease in costs of revenues of \$0.4 million associated with the mobile telephony services and device costs associated with the small group of customers retained by the Company as part of the DISH Purchase Agreement. Costs of revenues decreased in the current period due to the reversal of the penalties previously accrued during the six months ended June 30, 2022, of \$0.7 million. The Company was able to successfully negotiate with the MNO partner, deferring the impact of the penalties into Fiscal 2023 and beyond. The Company expects to incur penalties starting in Fiscal 2023 and thereafter until the contract is complete.

Cost of revenues from Tucows Corporate for the nine months ended September 30, 2022 decreased by \$2.5 million or 26%, to \$7.0 million from \$9.5 million in the nine months ended September 30, 2021. Consistent with the above discussion around net revenues, this was driven by decreased transitional services costs of \$3.9 million, notably from a decreased level of customer support and marketing services provided to DISH in connection with the legacy Ting Mobile customer base. The Company expects transitional services costs of revenues to continue to decrease through the remainder of Fiscal 2022 and thereafter as services are established directly by DISH. This decrease was partially offset by an increase in costs of revenues of \$1.4 million associated with the mobile telephony services and device costs associated with the small group of customers retained by the Company as part of the DISH Purchase Agreement. Costs of revenues increased as a result of the organic growth of the customer base we experienced through Fiscal 2021, brought about by new unlimited usage rate plans introduced in late Fiscal 2020. This increase was partially offset by the reversal of the penalties previously accrued during the six months ended June 30, 2022, of \$0.7 million. The Company was able to successfully negotiate with the MNO partner, deferring the impact of the penalties into Fiscal 2023 and beyond. The Company expects to incur penalties starting in Fiscal 2023 and thereafter until the contract is complete.

### Network Expenses

Network costs for the three months ended September 30, 2022 increased by \$3.5 million or 42%, to \$11.8 million, as compared to \$8.3 million for the three months ended September 30, 2021. The three-month increase was driven by increased depreciation of \$2.5 million driven by the Company's increased network infrastructure associated with the continuing expansion of the Ting Internet footprint and depreciation of Wavelo's new MONOS platform. This increase from depreciation was followed by increased network costs of \$0.8 million from increased personnel and contracted service costs focused on Ting and Wavelo, as well as a small increase in amortization of intangible assets of \$0.4 million attributed to the prior period acquisition of Simply Bits. These increases were partially offset by a decrease in impairment charges of \$0.2 million.

Network costs for the nine months ended September 30, 2022 increased by \$10.7 million or 46%, to \$34.0 million, as compared to \$23.3 million for the nine months ended September 30, 2021. The nine-month increase was driven by increased depreciation of \$7.3 million driven by the Company's increased network infrastructure associated with the continuing expansion of the Ting Internet footprint and depreciation of Wavelo's new MONOS platform. This increase from depreciation was followed by increased network costs of \$2.9 million from increased personnel and contracted service costs focused on Ting and Wavelo segments, as well as a small increase in amortization of intangible assets of \$0.8 million driven by the prior period acquisition of Simply Bits. These increases were partially offset by a decrease in impairment charges of \$0.3 million.

### SALES AND MARKETING

Sales and marketing expenses consist primarily of personnel costs. These costs include commissions and related expenses of our sales, product management, public relations, call center, support and marketing personnel. Other sales and marketing expenses include customer acquisition costs, advertising and other promotional costs.

|                                                      | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |           |
|------------------------------------------------------|---------------------------------------------|----------|--------------------------------------------|-----------|
|                                                      | 2022                                        | 2021     | 2022                                       | 2021      |
| <i>(Dollar amounts in thousands of U.S. dollars)</i> |                                             |          |                                            |           |
| Sales and marketing                                  | \$ 13,894                                   | \$ 9,892 | \$ 39,384                                  | \$ 27,579 |
| Increase over prior period                           | \$ 4,002                                    |          | \$ 11,805                                  |           |
| Increase - percentage                                | 40%                                         |          | 43%                                        |           |
| Percentage of net revenues                           | 18%                                         | 13%      | 16%                                        | 12%       |

Sales and marketing expenses for the three months ended September 30, 2022 increased by \$4.0 million, or 40%, to \$13.9 million as compared to the three months ended September 30, 2021. This three-month increase primarily related to the investment in hiring additional personnel for both Ting Internet and Wavelo's sales, product, marketing, customer support and success teams to drive growth in Ting and to support the launch and go to market strategy of Wavelo. The current period also includes the teams acquired as part of the Simply Bits acquisition. Outside of additional hiring, personnel costs were impacted by wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates. In addition to personnel related costs, both marketing related costs and facility costs increased to drive active subscription growth given the increase in serviceable addresses available to Ting and to support our growing workforce in select Ting towns across the United States.

Sales and marketing expenses for the nine months ended September 30, 2022 increased by \$11.8 million, or 43%, to \$39.4 million as compared to the nine months ended September 30, 2021. This nine-month increase primarily related to the investment in hiring additional personnel for both Ting Internet and Wavelo's sales, product, marketing, customer support and success teams to drive growth in Ting and to support the launch and go to market strategy of Wavelo. The current period also includes the teams acquired as part of the Simply Bits acquisition. Outside of additional hiring, personnel costs were impacted by wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates. In addition to personnel related costs, both marketing related costs and facility costs increased to drive active subscription growth given the increase in serviceable addresses available to Ting and to support our growing workforce in select Ting towns across the United States.



## TECHNICAL OPERATIONS AND DEVELOPMENT

Technical operations and development expenses consist primarily of personnel costs and related expenses required to support the development of new or enhanced service offerings and the maintenance and upgrading of existing infrastructure. This includes expenses incurred in the research, design and development of technology that we use to register domain names, Platform Services, Fiber Internet Services, email, retail, domain portfolio and other Internet services, as well as to distribute our digital content services. All technical operations and development costs are expensed as incurred.

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |           |
|-----------------------------------------------|---------------------------------------------|----------|--------------------------------------------|-----------|
|                                               | 2022                                        | 2021     | 2022                                       | 2021      |
| Technical operations and development          | \$ 2,983                                    | \$ 3,742 | \$ 10,212                                  | \$ 10,044 |
| Increase (decrease) over prior period         | \$ (759)                                    |          | \$ 168                                     |           |
| Increase (decrease) - percentage              | (20)%                                       |          | 2%                                         |           |
| Percentage of net revenues                    | 4%                                          | 5%       | 4%                                         | 5%        |

Technical operations and development expenses for the three months ended September 30, 2022 decreased by \$0.8 million, or 20%, to \$3.0 million when compared to the three months ended September 30, 2021. The decrease in costs relates primarily to increased capitalization of personnel costs for internal use software related to development aspects of the MONOS and ISOS Platforms, work which has accelerated in the current period. This was partially offset by increased personnel costs including wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates.

Technical operations and development expenses for the nine months ended September 30, 2022 increased by \$0.2 million, or 2%, to \$10.2 million when compared to the nine months ended September 30, 2021. The increase in costs relates primarily to increased spending on both personnel costs and external contractors to provide development resources to assist our internal engineering teams with development aspects of the MONOS and ISOS platforms. Personnel costs were also impacted by wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates. Of these costs, a significant portion has been capitalized as internal use software related to development aspects of the MONOS and ISOS Platforms. Outside of personnel costs, the Company also experienced increases in bandwidth costs in the current period, driven by the acquisition of Uniregistry assets in the fourth quarter of Fiscal 2021.

## GENERAL AND ADMINISTRATIVE

General and administrative expenses consist primarily of compensation and related costs for managerial and administrative personnel, fees for professional services, public listing expenses, rent, foreign exchange and other general corporate expenses.

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |           |
|-----------------------------------------------|---------------------------------------------|----------|--------------------------------------------|-----------|
|                                               | 2022                                        | 2021     | 2022                                       | 2021      |
| General and administrative                    | \$ 7,897                                    | \$ 5,069 | \$ 22,006                                  | \$ 15,232 |
| Increase over prior period                    | \$ 2,828                                    |          | \$ 6,774                                   |           |
| Increase - percentage                         | 56%                                         |          | 44%                                        |           |
| Percentage of net revenues                    | 10%                                         | 7%       | 9%                                         | 7%        |

General and administrative expenses for the three months ended September 30, 2022 increased by \$2.8 million, or 56% to \$7.9 million as compared to the three months ended September 30, 2021. The increase was primarily driven by an increase in personnel costs driven by the growth of teams acquired as part of the Simply Bits acquisition and continued investment in hiring for administrative teams to better support our segments as part of our new corporate reorganization. Outside of additional hiring, personnel costs were impacted by wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates. Another driver of the increase was the higher stock-based compensation expenses in order to attract, retain and scale core administrative teams to meet projected Company growth. Smaller contributors to the increase include bank charges, professional fees, and facility costs driven by Ting and the continuing expansion of the Ting Internet footprint.

General and administrative expenses for the nine months ended September 30, 2022 increased by \$6.8 million, or 44% to \$22 million as compared to the nine months ended September 30, 2021. The increase was primarily driven by an increase in personnel costs driven by the growth of teams acquired as part of the Simply Bits acquisition and continued investment in hiring for administrative teams to better support our segments as part of our new corporate reorganization. Outside of additional hiring, personnel costs were impacted by wage inflation across our three segments, with issued increases in excess of 5% to align with economic conditions and market rates. Another driver of the increase was the higher stock-based compensation expenses in order to attract, retain and scale core administrative teams to meet projected Company growth. Smaller contributors to the increase include other miscellaneous expenses such as business taxes, bank charges and facility costs driven by Ting and the continuing expansion of the Ting Internet footprint.

## DEPRECIATION OF PROPERTY AND EQUIPMENT

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |        | For the Nine Months Ended September<br>30, |        |
|-----------------------------------------------|---------------------------------------------|--------|--------------------------------------------|--------|
|                                               | 2022                                        | 2021   | 2022                                       | 2021   |
| Depreciation of property and equipment        | \$ 149                                      | \$ 136 | \$ 443                                     | \$ 384 |
| Increase over prior period                    | \$ 13                                       |        | \$ 59                                      |        |
| Increase - percentage                         | 10%                                         |        | 15%                                        |        |
| Percentage of net revenues                    | 0%                                          | 0%     | 0%                                         | 0%     |

Depreciation costs increased less than \$0.1 million for the three months ended September 30, 2022, to \$0.1 million when compared to the three months ended September 30, 2021. This increase was a result of increased fixed assets in the period.

Depreciation costs increased less than \$0.1 million for the nine months ended September 30, 2022, to \$0.4 million when compared to the nine months ended September 30, 2021. This increase was a result of increased fixed assets in the period.

## AMORTIZATION OF INTANGIBLE ASSETS

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |          |
|-----------------------------------------------|---------------------------------------------|----------|--------------------------------------------|----------|
|                                               | 2022                                        | 2021     | 2022                                       | 2021     |
| Amortization of intangible assets             | \$ 2,464                                    | \$ 2,267 | \$ 7,394                                   | \$ 6,909 |
| Increase over prior period                    | \$ 197                                      |          | \$ 485                                     |          |
| Increase - percentage                         | 9%                                          |          | 7%                                         |          |
| Percentage of net revenues                    | 3%                                          | 3%       | 3%                                         | 3%       |

Amortization of intangible assets for the three months ended September 30, 2022 increased by \$0.2 million to \$2.5 million as compared to the three months ended September 30, 2021. This increase was a result of the acquisition of Uniregistry assets in the fourth quarter of Fiscal 2021.

Amortization of intangible assets for the nine months ended September 30, 2022 increased by \$0.5 million to \$7.4 million as compared to the nine months ended September 30, 2021. This increase was a result of the acquisition of Uniregistry assets in the fourth quarter of Fiscal 2021.

## LOSS (GAIN) ON CURRENCY FORWARD CONTRACTS

Although our functional currency is the U.S. dollar, a major portion of our fixed expenses are incurred in Canadian dollars. Our goal with regard to foreign currency exposure is, to the extent possible, to achieve operational cost certainty, manage financial exposure to certain foreign exchange fluctuations and to neutralize some of the impact of foreign currency exchange movements. Accordingly, we enter into foreign exchange contracts to mitigate the exchange rate risk on portions of our Canadian dollar exposure.

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |         | For the Nine Months Ended September<br>30, |          |
|-----------------------------------------------|---------------------------------------------|---------|--------------------------------------------|----------|
|                                               | 2022                                        | 2021    | 2022                                       | 2021     |
| Loss (gain) on currency forward contracts     | \$ -                                        | \$ (87) | \$ -                                       | \$ (277) |
| Increase over prior period                    | \$ 87                                       |         | \$ 277                                     |          |
| Increase - percentage                         | 100%                                        |         | 100%                                       |          |
| Percentage of net revenues                    | -%                                          | -%      | -%                                         | -%       |

The Company recorded a net loss of nil in the change in fair value of outstanding contracts as well as realized on matured contracts during the three months ended September 30, 2022, compared to a net gain of \$0.1 million during the three months ended September 30, 2021.

The Company recorded a net loss of nil in the change in fair value of outstanding contracts as well as realized on matured contracts during the nine months ended September 30, 2022, compared to a net gain of \$0.3 million during the nine months September 30, 2021.

At September 30, 2022, our balance sheet reflects a derivative instrument asset of \$2.0 million and a liability of \$2.0 million as a result of our existing foreign exchange contracts. Until their respective maturity dates, these contracts will fluctuate in value in line with movements in the Canadian dollar relative to the U.S. dollar.

## OTHER INCOME (EXPENSES)

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |           |
|-----------------------------------------------|---------------------------------------------|----------|--------------------------------------------|-----------|
|                                               | 2022                                        | 2021     | 2022                                       | 2021      |
| Other income (expense), net                   | \$ 373                                      | \$ 4,300 | \$ 5,326                                   | \$ 12,385 |
| Increase (decrease) over prior period         | \$ (3,927)                                  |          | \$ (7,059)                                 |           |
| Increase (decrease) - percentage              | (91)%                                       |          | (57)%                                      |           |
| Percentage of net revenues                    | 0%                                          | 6%       | 2%                                         | 6%        |

Other Income during the three months ended September 30, 2022 decreased by \$3.9 million when compared to the three months ended September 30, 2021. This was driven by higher interest incurred of \$3.1 million, driven both by our Amended Credit Agreement (as defined below) as well as interest on redeemable preferred shares. In addition to higher interest expense, the Company experienced a \$0.8 million decrease in the gain on sale of Ting Customer Assets to DISH in the current period. As described above, the Company receives a payout on the margin associated with the legacy customer base sold to DISH over the 10-year term of the agreement, as form of consideration for the sale of the legacy customer relationships. The Company expects the gain on the sale of Ting Customer Assets to continue to decrease over the term of the payout as legacy customers naturally churn away from Ting Mobile.

Other Income during the nine months ended September 30, 2022 decreased by \$7.1 million when compared to the nine months ended September 30, 2021. This was partly due to higher interest incurred of \$5.3 million on our Amended Credit Agreement (as defined below) as well as interest on redeemable preferred shares. In addition to higher interest expense, the Company experienced a \$1.8 million decrease in the gain on sale of Ting Customer Assets to DISH in the current period. As described above, the Company receives a payout on the margin associated with the legacy customer base sold to DISH over the 10-year term of the agreement, as form of consideration for the sale of the legacy customer relationships. The Company expects the gain on the sale of Ting Customer Assets to continue to decrease over the term of the payout as legacy customers naturally churn away from Ting Mobile.

## INCOME TAXES

| (Dollar amounts in thousands of U.S. dollars) | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended September<br>30, |        |
|-----------------------------------------------|---------------------------------------------|----------|--------------------------------------------|--------|
|                                               | 2022                                        | 2021     | 2022                                       | 2021   |
| Provision for income taxes                    | \$ (1,027)                                  | \$ (299) | \$ 790                                     | \$ 665 |
| Decrease in provision over prior period       | \$ (728)                                    |          | \$ 125                                     |        |
| Decrease - percentage                         | *                                           |          | *                                          |        |
| Effective tax rate                            | 11%                                         | (28)%    | (6)%                                       | 11%    |
| * not meaningful                              |                                             |          |                                            |        |

Income taxes for the three months ended September 30, 2022 decreased by \$0.7 million when compared to the three months ended September 30, 2021. The change in effective tax rate is primarily due to the change in net income before tax for the period, and it is partially offset by an increase in valuation allowance on foreign tax credits as a result of a change in the geographical mix of income and reduced excess tax benefits related to stock-based compensation.

Income taxes for the nine months ended September 30, 2022 increased by \$0.1 million when compared to the nine months ended September 30, 2021. The change in effective tax rate is primarily due to the change in net income before tax for the period, and it is partially offset by an increase in valuation allowance on foreign tax credits as a result of a change in the geographical mix of income and reduced excess tax benefits related to stock-based compensation. There is aggregate tax expense over consolidated net loss for the period, primarily due to the geographical mix of income in taxable jurisdictions.

## ADJUSTED EBITDA

We believe that the provision of this supplemental non-GAAP measure allows investors to evaluate the operational and financial performance of our core business using similar evaluation measures to those used by management. We use adjusted EBITDA to measure our performance and prepare our budgets. Since adjusted EBITDA is a non-GAAP financial performance measure, our calculation of adjusted EBITDA may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP. Because adjusted EBITDA is calculated before recurring cash charges, including interest expense and taxes, and is not adjusted for capital expenditures or other recurring cash requirements of the business, it should not be considered as a liquidity measure. See the Consolidated Statements of Cash Flows included in the attached financial statements. Non-GAAP financial measures do not reflect a comprehensive system of accounting and may differ from non-GAAP financial measures with the same or similar captions that are used by other companies and/or analysts and may differ from period to period. We endeavor to compensate for these limitations by providing the relevant disclosure of the items excluded in the calculation of adjusted EBITDA to net income based on GAAP, which should be considered when evaluating the Company's results. Tucows strongly encourages investors to review its financial information in its entirety and not to rely on a single financial measure.

Our adjusted EBITDA definition excludes depreciation, amortization of intangible assets, income tax provision, interest expense (net), accretion of contingent consideration, stock-based compensation, asset impairment, gains and losses from unrealized foreign currency transactions and costs that are one-time in nature and not indicative of on-going performance (profitability), including acquisition and transition costs. Gains and losses from unrealized foreign currency transactions removes the unrealized effect of the change in the mark-to-market values on outstanding foreign currency contracts not designated in accounting hedges, as well as the unrealized effect from the translation of monetary accounts denominated in non-U.S. dollars to U.S. dollars.

The following table reconciles adjusted EBITDA to net income:

| Reconciliation of Adjusted EBITDA to Income before Provision for Income Taxes<br>(In Thousands of US Dollars)<br>(unaudited) | Three Months Ended September 30, |                     | Nine Months Ended September 30, |                     |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------------|---------------------|---------------------------------|---------------------|
|                                                                                                                              | 2022<br>(unaudited)              | 2021<br>(unaudited) | 2022<br>(unaudited)             | 2021<br>(unaudited) |
| <b>Adjusted EBITDA</b>                                                                                                       | \$ 7,879                         | \$ 12,205           | \$ 30,890                       | \$ 36,083           |
| Depreciation of property and equipment                                                                                       | 7,285                            | 4,758               | 20,063                          | 12,728              |
| Impairment and loss on disposition of property and equipment                                                                 | (16)                             | 470                 | 491                             | 536                 |
| Amortization of intangible assets                                                                                            | 2,842                            | 2,288               | 8,528                           | 7,253               |
| Interest expense, net                                                                                                        | 4,337                            | 1,169               | 8,555                           | 3,108               |
| Accretion of contingent consideration                                                                                        | 50                               | 96                  | 198                             | 287                 |
| Stock-based compensation                                                                                                     | 1,569                            | 1,126               | 4,396                           | 3,357               |
| Unrealized loss (gain) on change in fair value of foreign currency forward contracts                                         | -                                | 249                 | -                               | 606                 |
| Unrealized loss (gain) on foreign exchange revaluation of foreign denominated monetary assets and liabilities                | 348                              | 72                  | 446                             | 178                 |
| Acquisition and other costs <sup>1</sup>                                                                                     | 472                              | 901                 | 1,549                           | 2,034               |
| Income/(loss) before provision for income taxes                                                                              | \$ (9,008)                       | \$ 1,076            | \$ (13,336)                     | \$ 5,996            |

<sup>1</sup> Acquisition and other costs represent transaction-related expenses, transitional expenses, such as redundant post-acquisition expenses, primarily related to our acquisitions, including Simply Bits in November 2021. Expenses include severance or transitional costs associated with department, operational or overall company restructuring efforts, including geographic alignments

Adjusted EBITDA decreased by \$4.3 million to \$7.9 million for the three months ended September 30, 2022 when compared to the three months ended September 30, 2021. The decrease in adjusted EBITDA from period-to-period was primarily driven by decreased contribution from Wavelo due to significant investments into building out both our teams and platforms in support of future growth as well as a current period charge for amortization of the contract asset related to the DISH agreement. This decrease was furthered by Tucows Domains and to a lesser extent from Ting. For Tucows Domains, we continue to experience reduced contribution from continued normalization of domain registrations and slowed renewal rates relative to patterns experienced over the last fiscal years from the COVID-19 pandemic; as well as domains under management. For Ting, the decreased contribution is from the increased investment for the ramp of expenditures related to the Fiber Internet network build and expansion plan.

Adjusted EBITDA decreased by \$5.2 million to \$30.9 million for the nine months ended September 30, 2022 when compared to the nine months ended September 30, 2021. The decrease in adjusted EBITDA from period-to-period was primarily driven by decreased contribution from the increased investment in Ting for the ramp of expenditures related to the Fiber Internet network build and expansion plan. This was further decreased from Tucows Domain as we experience the reduced contribution from continued normalization of domain registrations and slowed renewal rates relative to patterns experienced over the last fiscal years from the COVID-19 pandemic; as well as domains under management. These decreases were partially offset by a small increase in contribution from Wavelo due to increased revenue growth in MONOS platform fees as additional DISH subscribers migrate to the platform.

## OTHER COMPREHENSIVE INCOME (LOSS)

To mitigate the impact of the change in fair value of our foreign exchange contracts on our financial results, in October 2012 we begun applying hedge accounting for the majority of the contracts we need to meet our Canadian dollar requirements on a prospective basis.

The following table presents other comprehensive income for the periods presented:

| <i>(Dollar amounts in thousands of U.S. dollars)</i> | For the Three Months Ended<br>September 30, |            | For the Nine Months Ended September<br>30, |            |
|------------------------------------------------------|---------------------------------------------|------------|--------------------------------------------|------------|
|                                                      | 2022                                        | 2021       | 2022                                       | 2021       |
| Other comprehensive income (loss)                    | \$ (1,774)                                  | \$ (1,385) | \$ (619)                                   | \$ (2,624) |
| Decrease over prior period                           | \$ (389)                                    |            | \$ 2,005                                   |            |
| Decrease - percentage                                | 28%                                         |            | (76)%                                      |            |
| Percentage of net revenues                           | (2)%                                        | (2)%       | (0)%                                       | (1)%       |

The impact of the fair value adjustments on outstanding hedged contracts for the three months ended September 30, 2022 was a gain in OCI before reclassifications of \$1.7 million as compared to a gain in OCI of \$0.5 million before reclassifications for the three months ended September 30, 2021.

The net amount reclassified to earnings during the three months ended September 30, 2022 was a gain of \$0.1 million compared to a gain of \$0.9 million during the three months ended September 30, 2021.

The impact of the fair value adjustments on outstanding hedged contracts for the nine months ended September 30, 2022 was a gain in OCI before reclassifications of \$0.5 million as compared to a loss in OCI of \$0.1 million before reclassifications for the nine months ended September 30, 2021.

The net amount reclassified to earnings during the nine months ended September 30, 2022 was a gain of \$0.1 million compared to a gain of \$2.7 million during the nine months ended September 30, 2021.

## LIQUIDITY AND CAPITAL RESOURCES

As of September 30, 2022, our cash and cash equivalents balance increased by \$21.4 million when compared to December 31, 2021. Our principal uses of cash were \$100 million for the continued investment in property and equipment driven by Ting Internet expansion, \$3.1 million related to the contingent consideration related to the acquisition of Cedar and Simply Bits, \$0.8 million related to deferred preferred financing costs, \$0.7 million related to the payment of loan payable costs, and \$0.1 million related to the acquisition of intangible assets. These uses of cash were partially offset by \$60 million proceeds from redeemable preferred shares, \$48.3 million proceeds received from the drawdown of the Amended Credit Agreement, \$17.0 million from cash provided from operating activities and \$0.8 million from the proceeds received on the exercise of stock options.

### *Amended 2019 Credit Facility*

On June 14, 2019, the Company and its wholly-owned subsidiaries, Tucows.com Co., Ting Fiber, Inc., Ting Inc., Tucows (Delaware) Inc. and Tucows (Emerald), LLC, entered into an Amended and Restated Senior Secured Credit Agreement with RBC, as administrative agent, and lenders party thereto (collectively with RBC, the “Lenders”) under which the Company has access to an aggregate of up to \$240 million in funds, which consists of \$180 million guaranteed credit facility and a \$60 million accordion facility. On November 27, 2019, the Company entered into Amending Agreement No. 1 to the Amended and Restated Senior Secured Credit Agreement (collectively with the Amended and Restated Senior Secured Credit Agreement, the “Amended 2019 Credit Facility”) to amend certain defined terms in connection with the Cedar acquisition.

The Amended 2019 Credit Facility replaced a secured Credit Agreement dated January 20, 2017 with Bank of Montreal, RBC and Bank of Nova Scotia.

The obligations of the Company under the Amended 2019 Credit Agreement are secured by a first priority lien on substantially all of the personal property and assets of the Company and has a four-year term, maturing on June 13, 2023.

### *Second Amended 2019 Credit Facility*

On October 26, 2021, the Company entered into a Second Amended and Restated Senior Secured Credit Agreement (the “Second Amended 2019 Credit Agreement”) with the Lenders and Toronto-Dominion Bank (collectively the “New Lenders”) to, among other things, increase the existing revolving credit facility from \$180 million to \$240 million. The Second Amended Credit Agreement provides the Company with access to an aggregate of \$240 million in committed funds. Under the Second Amended Credit Agreement, the Company has agreed to comply with the following financial covenants at all times, which are to be calculated on a rolling four quarter basis: (i) maximum Total Funded Debt to Adjusted EBITDA Ratio of 4.50:1.00 until March 31, 2023 and 4.00:1.00 thereafter; and (ii) minimum Interest Coverage Ratio of 3.00:1.00. The Second Amended Credit Agreement also provides for two additional interest rate tiers if the Company exceeds a 3.50x Total Funded Debt to Adjusted EBITDA Ratio.

### *Third Amended 2019 Credit Facility*

On August 8, 2022, the Company entered into the Third Amended 2019 Credit Facility (the “Amended Credit Agreement”) with the Lenders. The Amended Credit Agreement continues to provide the Company with access to the Credit Facility. Under the Amended Credit Agreement, and in connection with the Unit Purchase Agreement the Lenders agreed that Ting Fiber, Inc. (converted to Ting LLC) and its wholly owned subsidiaries ceased to be Guarantors under the Credit Facility and were released from their respective guarantee and security documents, including a release of the Lenders' security interests and liens upon the assets of such entities. Additionally, the Amended Credit Agreement has extended the maturity of the Credit Facility to June 14, 2024. The Company is subject to the following financial covenants at all times, which are to be calculated on a rolling four quarter basis: (i) maximum Total Funded Debt to Adjusted EBITDA Ratio of 4.00:1.00 until September 29, 2023 and 3.75:1.00 thereafter; and (ii) minimum Interest Coverage Ratio of 3.00:1.00. The financial covenant calculations will exclude the financial results of Ting Fiber Inc. (converted to Ting LLC) and its wholly owned subsidiaries. The Amended Credit Agreement added SOFR Loans as a form of advance available under the Credit Facility to replace LIBOR Rate Advances, and such SOFR Loans may bear interest based on Adjusted Daily Simple SOFR (defined to be the applicable SOFR rate published by the Federal Reserve Bank of New York plus 0.10% per annum subject to a floor of zero) or Adjusted Term SOFR (defined to be the applicable SOFR rate published by CME Group Benchmark Administration Limited plus 0.10% for one-month, 0.15% for three-months, and 0.25% for six-months per annum).

### ***Cash Flow from Operating Activities***

Net cash inflows from operating activities during the nine months ended September 30, 2022 totaled \$17.0 million, a decrease of 11% when compared to the nine months ended September 30, 2021.

Net income, after adjusting for non-cash charges, during the nine months ended September 30, 2022 was \$15.5 million, a decrease of 38% when compared to the prior year. Net income included non-cash charges and recoveries of \$29.6 million such as depreciation, amortization, stock-based compensation, loss (gain) on change in fair value of currency forward contracts, net right of use operating asset or liability, accretion of contingent consideration, amortization of debt discount and issuance costs, impairment of property and equipment, loss on disposal of domain names, net amortization of contract costs, excess tax benefits on stock-based compensation, accretion of redeemable preferred shares, and deferred income taxes (recovery). In addition, changes in our working capital contributed net cash of \$1.5 million. Utilized cash of \$13 million from the changes in contract assets, inventory, customer deposits, deferred revenue, accounts receivable and accreditation fees payable were offset by positive contributions of \$14.5 million from movements in accounts payable, income taxes recoverable, prepaid expenses and deposits, accrued liabilities, and deferred costs of fulfillment.

### ***Cash Flow from Financing Activities***

Net cash inflows from financing activities during the nine months ended September 30, 2022 totaled \$104.6 million, an increase of 243% when compared to the nine months ended September 30, 2021. Total cash inflows were driven by \$60 million of proceeds from redeemable preferred shares issued to Generate, \$48.3 million of proceeds received from drawdown of the Credit Facility, as well as \$0.8 million from proceeds received on exercise of stock options. These cash inflows were partially offset by \$3.1 million related to the contingent consideration related to the acquisition of Cedar and Simply Bits, \$0.8 million from deferred preferred financing costs, as well as \$0.7 million related to the payment of loan payable costs.

### ***Cash Flow from Investing Activities***

Investing activities during the nine months ended September 30, 2022 used net cash of \$100.1 million, an increase of 91% when compared to the nine months ended September 30, 2021. Cash outflows of \$100 million primarily related to the investment in property and equipment, primarily to support the continued expansion of our Ting Internet Fiber network footprints in California, Colorado, Idaho, North Carolina and Virginia as we seek to extend both our current network and expand to new markets. We expect our capital expenditures on building and expanding our fiber network to continue to increase during Fiscal 2022. In addition to investment in property and equipment, the current period used \$0.1 million for the acquisition of other intangible assets.

### ***Material Cash Requirements***

In order to continue the Company's planned expansion of the Ting Internet footprint, the Company will need to access additional financing under the Unit Purchase Agreement by meeting certain predetermined operational and financial drawdown milestones. Under the Unit Purchase Agreement, from the Transaction Close until the earlier of (i) the End Date and (ii) the date upon which Generate has purchased \$140 million of Series A Preferred units pursuant to Milestone Fundings, Ting LLC is required to pay Generate a standby fee at a rate of 0.50% of the unpaid \$140 million capital commitment which will be paid quarterly. In addition, in order to further accelerate the expansion of the Ting Internet footprint, the Company may seek additional financing, which may include an equity or debt issuance, a partnership or collaborating arrangement with another third party. We may not be able to secure additional financing on favorable terms, or at all, at the time when we need that funding. We currently have no commitments or agreements regarding the acquisition of other businesses. Any additional financing may be dilutive to existing investors.

In our 2021 Annual Report, we disclosed our material cash requirements. As of September 30, 2022, other than the items mentioned above, there have been no other material changes to our material cash requirements outside the ordinary course of business.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We develop products in Canada and sell these services in North America and Europe. Our sales are primarily made in U.S. dollars, while a major portion of expenses are incurred in Canadian dollars. Our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets. Our interest income is sensitive to changes in the general level of Canadian and U.S. interest rates, particularly since the majority of our investments are in short-term instruments. Based on the nature of our short-term investments, we have concluded that there is no material interest rate risk exposure as of September 30, 2022.

We are also subject to market risk exposure related to changes in interest rates under our Amended Credit Agreement. In an effort to mitigate a portion of our market risk exposure the Company has entered into a pay-fixed, receive-variable interest rate swap with a Canadian chartered bank to limit the potential interest rate fluctuations incurred on its future cash flows related to variable interest payments on the Amended Credit Agreement. The notional value of the swap at September 30, 2022 is \$70 million, consistent with December 31, 2021.

Changes in interest rates will impact our borrowing cost. However, fluctuations in interest rates are beyond our control. We have entered into an interest rate swap as discussed above to mitigate risk on portions of our interest rate exposure. We will continue to monitor and assess the risks associated with interest expense exposure and may take additional actions in the future to mitigate these risks.

Although our functional currency is the U.S. dollar, a substantial portion of our fixed expenses are incurred in Canadian dollars. Our policy with respect to foreign currency exposure is to manage financial exposure to certain foreign exchange fluctuations with the objective of neutralizing some of the impact of foreign currency exchange movements. Exchange rates are, however, subject to significant and rapid fluctuations, and therefore we cannot predict the prospective impact of exchange rate fluctuations on our business, results of operations and financial condition. Accordingly, we have entered into foreign exchange forward contracts to mitigate the exchange rate risk on portions of our Canadian dollar exposure.

As of September 30, 2022, we had the following outstanding foreign exchange forward contracts to trade U.S. dollars in exchange for Canada dollars:

| <b>Maturity date (Dollar amounts in thousands of U.S. dollars)</b> | <b>Notional amount of<br/>U.S. dollars</b> | <b>Weighted average<br/>exchange rate of U.S.<br/>dollars</b> | <b>Fair value Asset</b> |
|--------------------------------------------------------------------|--------------------------------------------|---------------------------------------------------------------|-------------------------|
| October - December 2022                                            | \$ 14,897                                  | 1.2906                                                        | \$ (971)                |
| January - March 2023                                               | 15,132                                     | 1.3283                                                        | (552)                   |
| April - June 2023                                                  | 13,074                                     | 1.3385                                                        | (364)                   |
| July - September 2023                                              | 11,332                                     | 1.3633                                                        | (102)                   |
| October - December 2023                                            | 10,150                                     | 1.3744                                                        | -                       |
|                                                                    | <u>\$ 64,585</u>                           | <u>1.3351</u>                                                 | <u>\$ (1,989)</u>       |

As of September 30, 2022, the Company had \$64.6 million of outstanding foreign exchange forward contracts which will convert to \$86.2 million Canadian dollars. Of these contracts, \$64.6 million met the requirements for hedge accounting. As of December 31, 2021, the Company held contracts in the amount of \$25.2 million to trade U.S. dollars in exchange for \$32.0 million Canadian dollars. Of these contracts, \$25.2 million met the requirements for hedge accounting.

We have performed a sensitivity analysis model for foreign exchange exposure over the three months ended September 30, 2022. The analysis used a modeling technique that compares the U.S. dollar equivalent of all expenses incurred in Canadian dollars, at the actual exchange rate, to a hypothetical 10% adverse movement in the foreign currency exchange rates against the U.S. dollar, with all other variables held constant. Foreign currency exchange rates used were based on the market rates in effect during the three months ended September 30, 2022. The sensitivity analysis indicated that a hypothetical 10% adverse movement in foreign currency exchange rates would result in a decrease in net income for the three months ended September 30, 2022 of approximately \$1.5 million, before the effects of hedging. We will continue to monitor and assess the risk associated with these exposures and may take additional actions in the future to hedge or mitigate these risks.

## Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk consist principally of cash equivalents, marketable securities, foreign exchange contracts and accounts receivable. Our cash, cash equivalents and short-term investments are in high-quality securities placed with major banks and financial institutions whom we have evaluated as highly creditworthy and commercial paper. Similarly, we enter into our foreign exchange contracts with major banks and financial institutions. With respect to accounts receivable, we perform ongoing evaluations of our customers, generally granting uncollateralized credit terms to our customers, and maintaining an allowance for doubtful accounts based on historical experience and our expectation of future losses.

## Interest rate risk

Our exposure to interest rate fluctuations relate primarily to our Amended Credit Agreement.

As of September 30, 2022, we had an outstanding balance of \$238.9 million on the Amended Credit Agreement. The Amended Credit Agreement added SOFR Loans as a form of advance available under the Credit Facility to replace LIBOR Rate Advances, and such SOFR Loans may bear interest based on Adjusted Daily Simple SOFR (defined to be the applicable SOFR rate published by the Federal Reserve Bank of New York plus 0.10% per annum subject to a floor of zero) or Adjusted Term SOFR (defined to be the applicable SOFR rate published by CME Group Benchmark Administration Limited plus 0.10% for one-month, 0.15% for three-months, and 0.25% for six-months per annum). In May 2020, the Company entered into a pay-fixed, receive-variable interest rate swap with a Canadian chartered bank to limit the potential interest rate fluctuations incurred on its future cash flows related to the variable interest payments on the Credit facility. The notional value of the interest rate swap was \$70 million as of September 30, 2022, consistent with December 31, 2021. The Company does not use the interest rate swap for trading or speculative purposes. The contract is coterminous with the Credit facility, maturing in June 2024. As of September 30, 2022, an adverse change of one percent on the interest rate would have the effect of increasing our annual interest payment on Amended Credit Agreement by approximately \$1.7 million, after the effects of hedging, assuming that the loan balance as of September 30, 2022 is outstanding for the entire period.

## Item 4. Controls and Procedures

### (a) Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated, as of the end of the period covered by this report, the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e). Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their control objectives. Based on the evaluation of our disclosure controls and procedures as of the end of the period covered by this quarterly report, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2022 our disclosure controls and procedures were effective at the reasonable assurance level.

### (b) Changes in Internal Control over Financial Reporting

There were no changes made in our internal controls over financial reporting during the nine months ended September 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.



## PART II OTHER INFORMATION

### Item 1. Legal Proceedings

We are involved in various investigations, claims and lawsuits arising in the normal conduct of our business, none of which, individually or in the aggregate, we believe will materially harm our business. We cannot assure that we will prevail in any litigation. Regardless of the outcome, any litigation may require us to incur significant litigation expense and may result in significant diversion of our attention.

#### Item 1A. Risk Factors

The following risk factors are provided to update the risk factors previously disclosed under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021. The risks described in this Quarterly Report and in our Annual Report on Form 10-K and other Quarterly Reports are not the only risks facing the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may adversely affect our business, financial condition or operating results.

***Our preferred share unit financing arrangement could adversely affect our financial condition, our ability to operate our business, divert our cash flow from operations for debt payments, and prevent us from meeting our debt obligations. Our preferred share financing agreement imposes predetermined operational and financial drawdown milestones on our Ting segment, which may prevent us from obtaining additional financing under such preferred unit financing arrangement. In addition, the Company may need additional financing to further accelerate the expansion of the Ting Internet footprint.***

On August 8, 2022, Ting LLC entered into the Unit Purchase Agreement with Generate under which Ting LLC has committed to issue and sell \$60 million of Series A Preferred Units at the Initial Funding, subject to customary closing conditions, and an additional aggregate of \$140 million Series A Preferred Units if the Milestones are achieved over a three year period from the date of the Transaction Close. The Series A Preferred Units will accrue a preferred return of 15% per annum (subject to certain adjustments as described below) on a non-cash basis under the first 24 months under the Unit Purchase Agreement. Our ability to achieve the Milestones to access the additional funding, as well as to generate cash flow from operations to make the payments in respect of the preferred return, will depend on our future performance, which will be affected by a range of economic, competitive and business factors as well as changes in government monetary or fiscal policy. The failure to access the additional funding or pay the preferred return, could have a material adverse effect on our business. In addition, the Company is obligated to redeem Generate's equity interests for an amount equal to the outstanding capital balance plus the unsatisfied preferred return (and pay a make-whole premium if the redemption occurs within the four years following the Transaction Close), upon certain conditions, including a material breach of any Tucows' credit agreement that is not cured, the failure to pay the preferred return in two consecutive quarters following the second anniversary of the Transaction Close, and the six year anniversary of the Transaction Close.

In addition, in order to further accelerate the expansion of the Ting Internet footprint, the Company may seek additional financing, which may include an equity or debt issuance, a partnership or collaborating arrangement with another third party. We may not be able to secure additional financing on favorable terms, or at all, at the time when we need that funding, and if not available, could have a material adverse effect on our business. Moreover, any additional financing may be dilutive to existing investors.

***We are subject to minimum purchase commitments with some partner network providers***

In some Ting markets, our Ting segment operates Internet networks owned by third parties, such as municipalities or private entities (“Partner Network Providers”), as opposed to owning and constructing the Internet network ourselves. The Company pays a fee to Partner Network Providers in exchange for the use of the Internet network. Fees are commonly subject to minimum purchase commitments which can vary in their structure, but often increase as the Internet network is constructed and Ting is provided access to more serviceable addresses. In order to generate profit and avoid losses in these partner markets, we must generate enough revenue to offset our costs, including our minimum purchase commitments by attracting new customers and managing attrition.



**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

On February 10, 2022, the Company announced that its Board approved a stock buyback program (the "2022 Buyback Program") to repurchase up to \$40 million of its common stock in the open market. Purchases will be made exclusively through the facilities of the NASDAQ Capital Market. The stock buyback program commenced on February 11, 2022 and will terminate on or before February 10, 2023. For the three and nine months ended September 30, 2022, the Company did not repurchase any shares under the 2022 Buyback Program.

On August 8, 2022, Ting LLC entered into the Unit Purchase Agreement pursuant to which Ting LLC will sell and issue 10,000,000 of its Series A Preferred Units to Generate at a cash purchase price of \$6.00 per Series A Preferred Unit for an aggregate purchase price of \$60 million at the Initial Funding. The sale of such shares was not registered under the Securities Act because it was made in a transaction exempt from registration under Section 4(a)(2) of the Securities Act and/or Rule 506 promulgated thereunder.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

| No.      | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1.1    | <a href="#">Fourth Amended and Restated Articles of Incorporation of Tucows Inc. (Incorporated by reference to Exhibit 3.1 filed with Tucows' Current Report on Form 8-K, as filed with the SEC on November 29, 2007).</a>                                                                                                                                                                                                                                                                                 |
| 3.1.2    | <a href="#">Articles of Amendment to Fourth Amended and Restated Articles of Incorporation of Tucows Inc. (Incorporated by reference to Exhibit 3.1 filed with Tucows' Current Report on Form 8-K, as filed with the SEC on January 3, 2014).</a>                                                                                                                                                                                                                                                          |
| 3.2      | <a href="#">Second Amended and Restated Bylaws of Tucows Inc. (Incorporated by reference to Exhibit 3.2 filed with Tucows' Annual Report on Form 10-K for the year ended December 31, 2006, as filed with the SEC on March 29, 2007).</a>                                                                                                                                                                                                                                                                  |
| 3.3      | <a href="#">Amendment No. 1 to Second Amended and Restated Bylaws of Tucows Inc. (Incorporated by Reference to Exhibit 3.3 filed with Tucows' Quarterly Report on Form 10-Q for the quarter ended June 30, 2012).</a>                                                                                                                                                                                                                                                                                      |
| 10.1     | <a href="#">Amending agreement No.1 to the Second Amended and Restated Senior Secured Credit Agreement, dated March 31, 2022 (Incorporated by Reference to Exhibit 3.4 filed with Tucows' Quarterly Report on Form 10-Q for the quarter ended March 31, 2022)</a>                                                                                                                                                                                                                                          |
| 10.2#    | <a href="#">Amending agreement No.2 to the Second Amended and Restated Senior Secured Credit Agreement, dated June 29, 2022,(Incorporated by Reference to Exhibit 10.2 filed with Tucows' Quarterly Report on Form 10-Q for the quarter ended June 30, 2022)</a>                                                                                                                                                                                                                                           |
| 10.3#    | <a href="#">Third Amended and Restated Senior Secured Credit Agreement, dated August 8, 2022, by and among Tucows.com Co., Ting Fiber, Inc., Ting Inc., Tucows (Delaware) Inc., Tucows (Emerald), LLC, as Borrowers, Tucows Inc. and certain other subsidiaries thereof, as Guarantors, Royal Bank of Canada, as Administrative Agent, and Bank of Montreal, Royal Bank of Canada, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, HSBC Bank Canada and Toronto Dominion-Bank as Lenders.</a> |
| 10.4#    | <a href="#">Series A Preferred Unit Purchase Agreement, dated August 8, 2022, by and among Ting Fiber, LLC, a Delaware limited liability company and Generate TF Holdings, LLC</a>                                                                                                                                                                                                                                                                                                                         |
| 31.1#    | <a href="#">Chief Executive Officer's Rule 13a-14(a)/15d-14(a) Certification</a>                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 31.2#    | <a href="#">Chief Financial Officer's Rule 13a-14(a)/15d-14(a) Certification</a>                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 32.1†    | <a href="#">Chief Executive Officer's Section 1350 Certification †</a>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 32.2†    | <a href="#">Chief Financial Officer's Section 1350 Certification †</a>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 101.INS# | Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)                                                                                                                                                                                                                                                                                                                                      |
| 101.SCH# | Inline XBRL Taxonomy Extension Schema Document                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 101.CAL# | Inline XBRL Taxonomy Extension Calculation Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 101.DEF# | Inline XBRL Taxonomy Extension Definition Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 101.LAB# | Inline XBRL Taxonomy Extension Label Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 101.PRE# | Inline XBRL Taxonomy Extension Presentation Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 104#     | Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)                                                                                                                                                                                                                                                                                                                                                                                                                   |
| #        | <a href="#">Filed herewith.</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| †        | <a href="#">Furnished herewith.</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

**SIGNATURES**

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

Date: November 3, 2022

TUCOWS INC.

By: /s/ ELLIOT NOSS  
Elliot Noss  
President and Chief Executive Officer

By: /s/ DAVINDER SINGH  
Davinder Singh  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**TUCOWS.COM CO.**

as Canadian Borrower

- and -

**TUCOWS (DELAWARE) INC., TING INC., TUCOWS (EMERALD), LLC and WAVELO, INC. (FORMERLY NAMED TUCOWS CORP.)**

as U.S. Borrowers

- and -

**TUCOWS INC.**

as Parent

**ROYAL BANK OF CANADA**

as Agent

- and -

**THE FINANCIAL INSTITUTIONS IDENTIFIED  
ON THE SIGNATURE PAGES HERETO**

as Lenders

- and -

**ROYAL BANK OF CANADA**

as Lead Arranger and Sole Bookrunner

- and -

**BANK OF MONTREAL**

as Syndication Agent

**THIRD AMENDED AND RESTATED SENIOR SECURED CREDIT AGREEMENT**

**Dated as of August 8, 2022**

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### THIRD AMENDED AND RESTATED SENIOR SECURED CREDIT AGREEMENT

**THIS THIRD AMENDED AND RESTATED SENIOR SECURED CREDIT AGREEMENT** made as of August 8, 2022 among **TUCOWS.COM CO.**, as Canadian Borrower, **TUCOWS (DELAWARE) INC.**, **TING INC.**, **TUCOWS (EMERALD), LLC** and **WAVELO, INC. (formerly named Tucows Corp.)**, as U.S. Borrowers, **TUCOWS INC.**, as Parent, **ROYAL BANK OF CANADA**, as Agent, the financial institutions identified on the signature pages hereto, as Lenders and **ROYAL BANK OF CANADA**, as Sole Lead Arranger and Sole Bookrunner.

**WHEREAS** the Borrowers (other than Wavelo, Inc.), the Parent, Royal Bank of Canada, as administrative agent, and certain of the lenders are parties to a second amended and restated credit agreement dated as of October 26, 2021 (such agreement as amended, the **“Original Credit Agreement”**); and

**AND WHEREAS** the parties hereto have agreed to amend and restate the Original Credit Agreement on the terms and conditions provided herein.

**NOW THEREFORE** for good and valuable consideration the receipt and sufficient of which is agreed to by each of the parties hereto, the parties hereto acknowledge and agree as follows:

#### ARTICLE 1 INTERPRETATION

##### Section 1.01. Defined Terms.

As used in this Agreement, the following terms have the following meanings:

**“2022 Reorganization”** means the corporate reorganization transactions contemplated by the Steps Plan.

**“Accommodation”** means (i) an Advance made by a Lender on the occasion of any Borrowing; (ii) the creation and purchase of Banker’s Acceptances or the purchase of completed Drafts by a Lender on the occasion of any Drawing; and (iii) the issue of a Letter of Credit by the Fronting Letter of Credit Lender on the occasion of any Issue (each of which is a **“Type”** of Accommodation).

**“Accommodation Notice”** means a Borrowing Notice, an Interest Rate Election Notice, a Drawing Notice or an Issue Notice, as the case may be.

**“Accommodations Outstanding”** means, at any time in relation to (a) a Borrower and any Lender, the amount of all Accommodations outstanding thereunder made to such Borrower by such Lender; (b) a Borrower and all Lenders, the amount of all Accommodations outstanding thereunder made to such Borrower by the Lenders; (c) the Borrowers and any Lender, the amount of all Accommodations outstanding thereunder made to the Borrowers by such Lender; and (d) the Borrower and all Lenders, the amount of all Accommodations outstanding thereunder made to the Borrowers by the Lenders. In determining Accommodations Outstanding, the aggregate amount thereof shall be determined on the basis of the aggregate principal amount of all outstanding Advances, the aggregate Face Amount of all outstanding BA Instruments (if any) which any applicable Lender has purchased or arranged to have purchased and the aggregate principal amount of all outstanding Swingline Advances for which the Lenders are contingently liable pursuant to ARTICLE 3 and the aggregate Face Amount of all outstanding Letters of Credit for which the Lenders are contingently liable pursuant to ARTICLE 5. In determining Accommodations Outstanding, the foregoing amounts shall be expressed in U.S. Dollars and each relevant amount denominated in Canadian Dollars shall be converted (for purposes of such determination only) into its Equivalent Amount in U.S. Dollars as of the date of determination.

**“Acquisition”** means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the Assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Equity Interests of any Person or otherwise causing any Person to become a Subsidiary of the Parent, or (c) an amalgamation, plan of arrangement, merger or consolidation or any other combination with another Person, except any such merger or consolidation involving such Person or a subsidiary in which the shares of capital stock of such Person outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation, and **“Acquire”** and **“Acquired”** have meanings correlative thereto.

**Adjusted Daily Simple SOFR** means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10% (10 basis points).

**“Adjusted EBITDA”** means, in respect of any fiscal period, EBITDA for such fiscal period plus an amount equal to the lesser of the following: (i) the portion (if any) of the Verizon Liability or other similar liability to other carriers which was deducted in the determination of EBITDA for such fiscal period; and (ii) the Verizon Liability and any other similar liability to other carriers included in the calculation of Funded Debt as at the end of such fiscal period.

**“Adjusted Term SOFR”** means with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR plus (ii) of 0.10% (10 basis points) for one-month, 0.15% (15 basis points) for three-month, and 0.25% (25 basis points) for six-months.

**“Advances”** means advances of funds made by a Lender under ARTICLE 3 and **“Advance”** means any one of such advances. Advances may be denominated in Canadian Dollars (a **“Canadian Dollar Advance”**) or U.S. Dollars (a **“U.S. Dollar Advance”**). A Canadian Dollar Advance is designated as a **“Canadian Prime Rate Advance”** and a U.S. Dollar Advance may (in accordance with ARTICLES 2 and 3) be designated as a **“SOFR Loan”**, a **“Base Rate (Canada) Advance”** or **“Base Rate (United States) Advance”**. Canadian Prime Rate Advances, Base Rate (Canada) Advances and Base Rate (United States). Each of a Canadian Prime Rate Advance, a SOFR Loan, a Base Rate (Canada) Advance and a Base Rate (United States) Advance is a **“Type”** of Advance.

**“Affiliate”** means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person.

**“Agent”** means Royal Bank of Canada, its successors and permitted assigns in its capacity as an administration agent hereunder.

**“Agreement”** means this third amended and restated senior secured credit agreement and all schedules thereto, as amended, supplemented or restated from time to time; and the expressions **“Article”** and **“Section”** followed by a number mean and refer to the specified Article or Section of this Agreement.

**“AML Legislation”** has the meaning set out in Section 15.10.

**“Annual Business Plan”** means a business plan in respect of the Parent and its Subsidiaries for a Financial Year, approved by the board of directors of the Parent and disclosing all assumptions made in the formulation thereof, which shall include a detailed Capital Expenditure budget and projections on a quarterly basis in respect of revenue, expenses, cashflow, balance sheet items and compliance with all financial covenants in Section 9.03 herein.

**“Applicable Margin”** means, at any time, subject to the following sentences of this definition, the margins in basis points per annum set forth in Schedule 6 corresponding to the Total Funded Debt to Adjusted EBITDA Ratio at such time. In respect of (i) Canadian Prime Rate Advances, Base Rate (Canada) Advances and Base Rate (United States) Advances, the Applicable Margin shall be the margin referred to in the row **“Canadian Prime Rate/Base Rate Advances”** in Schedule 6; and (ii) Drawings, SOFR Loans or Letters of Credit, the Applicable Margin shall be the margin referred to in the row **“BAs/SOFR Loans/Letters of Credit”** in Schedule 6, in each case corresponding to the Total Funded Debt to Adjusted EBITDA Ratio at such time. If applicable, each Applicable Margin shall be adjusted in the manner prescribed in Schedule 6 five Business Days after the date the Agent receives a Compliance Certificate pursuant to Section 9.01(1)(c) calculating the Total Funded Debt to Adjusted EBITDA Ratio. Such adjusted Applicable Margin shall apply in respect of (a) Advances, from and after such date, (b) Drawings, to Drawings made from and after such date (and shall not affect the Applicable Margin in respect of any outstanding Drawing), and (c) Letters of Credit, to Letters of Credit fees calculated from and after such date. In the event that the Parent has not delivered a Compliance Certificate in respect of any Financial Quarter as required pursuant to Section 9.01(1)(c), the Applicable Margin shall be the highest rate provided for in any column of Schedule 6 until such time as such Compliance Certificate has been delivered (and thereafter shall correspond to the Applicable Margin calculated pursuant to the preceding sentences hereof). At any time an Event of Default has occurred and is continuing the Applicable Margins in Schedule 6 shall in each case be increased by 200 bps.

**“Applicable Percentage”** means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be the percentage of the total Accommodations Outstanding represented by such Lender’s Accommodations Outstanding.

**“Applicable Commitment Fee Rate”** means, at any time, the commitment fee rate in basis points per annum set forth and defined in the row headed **“Applicable Commitment Fee Rate”** as applicable, in Schedule 6 and corresponding to the Total Funded Debt to Adjusted EBITDA Ratio at such time. If applicable, the Applicable Commitment Fee Rate shall be adjusted in the manner prescribed by Schedule 6 five Business Days after the date the Agent receives the relevant Compliance Certificate pursuant to Section 9.01(1)(c) calculating the Total Funded Debt to Adjusted EBITDA Ratio. In the event that the Parent has not delivered a Compliance Certificate in respect of any Financial Quarter as required pursuant to Section 9.01(1)(c), the Applicable Commitment Fee Rate shall be the highest rate provided for in any column of Schedule 6 until such time as such Compliance Certificate has been delivered (and thereafter shall correspond to the applicable rate calculated pursuant to the preceding sentences hereof).

**“Approved Fund”** means, with respect to any Lender that is an investment fund that invests in bank loans, any other investment fund that invests in bank loans and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Arm’s Length”** has the meaning interpreted for the purposes of the *Income Tax Act* (Canada), as in effect as of the date hereof.

**“Asset Sales”** means, in respect of the Parent or any of its Subsidiaries, a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any other Person, in one transaction or a series of transactions, of all or any part of the Parent’s or any of its Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including the Equity Interests of any Subsidiary of the Parent (including by issuance of such Equity Interests). For greater certainty, for purposes of Section 2.05(1), an Asset Sale shall not include Dispositions of Assets between the Parent and any Subsidiary Guarantor or between Subsidiary Guarantors.

**“Assets”** means, with respect to any Person, any property, assets and undertakings of such Person of every kind and wheresoever situate, whether now owned or hereafter acquired (and, for greater certainty, includes any equity or like interest of such Person in any other Person).

**“Assignment and Assumption”** means an assignment and assumption agreement substantially in the form of Schedule 8.

**“Authorization”** means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Entity.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 3.06.

**“BA Equivalent Note”** has the meaning specified in Section 4.03(3).

**“BA Instruments”** means, collectively, Banker’s Acceptances, Drafts and BA Equivalent Notes, and, in the singular, any one of them.

**“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 which is described in the EU Bail-In Legislation Schedule.

**“Banker’s Acceptance”** has the meaning specified in Section 4.01(1).

**“Base Rate (Canada)”** means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1.00% and (iii) Adjusted Daily Simple SOFR in effect for such day plus 1.00%; provided that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Base Rate (Canada) due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Daily Simple SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Daily Simple SOFR, respectively. If the Base Rate (Canada) is being used as an alternative rate of interest pursuant to Sections 3.05 or 3.06, then the Base Rate (Canada) shall be the greater of clauses (i) and (ii) above and shall be determined without reference to clause (iii) above.

**“Base Rate (United States)”** means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1.00% and (iii) Adjusted Daily Simple SOFR in effect for such day plus 1.00%; provided that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Base Rate (United States) due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Daily Simple SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Daily Simple SOFR, respectively. If the Base Rate (United States) is being used as an alternative rate of interest pursuant to Sections 3.05 or 3.06, then the Base Rate (United States) shall be the greater of clauses (i) and (ii) above and shall be determined without reference to clause (iii) above.

**“basis point”** or **“bps”** means 1/100th of one per cent.

**“Benchmark”** means, at the election of the Borrower, Daily Simple SOFR or the Term SOFR Reference Rate, provided that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the Term SOFR Reference Rate, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.06.

**“Benchmark Replacement”** means the sum of: (a) the alternate benchmark rate that has been selected by the Agent and the Borrowers giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time in Canada and the United States, and (b) the related Benchmark Replacement Adjustment; provided, that if the Benchmark Replacement as so determined pursuant to the above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

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

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

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the IOSCO Principles; provided, that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

(3) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative or in compliance with or aligned with the IOSCO Principles.

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

**“Benchmark Transition Start Date”** means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date, and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**“Benchmark Unavailability Period”** means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.06 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.06.



**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership, as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. §1010.230.

**“Beneficiary”** means, in respect of a Letter of Credit, the beneficiary named in the Letter of Credit or the Issue Notice with respect thereto.

**“Bona Fide Debt Fund”** means a bona fide debt fund, investment vehicle, regulated banking entity or non-regulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in loans, commitments and similar extensions of credit in the ordinary course of business.

**“Borrower Materials”** has the meaning specified in [Section 23.01\(4\)](#).

**“Borrowers”** means, collectively, the Canadian Borrower and the U.S. Borrowers, and **“Borrower”** means any one of them, as applicable.

**“Borrower’s Account”** means, in respect of any Borrower, (i) in respect of Canadian Dollars, such Borrower’s Canadian Dollar account, if applicable; (ii) in respect of U.S. Dollars, such Borrower’s U.S. Dollar account, in each case maintained by such Borrower with the Agent at its Toronto main branch (or other designated branch acceptable to the Agent), the particulars of which shall have been notified to the Agent by the applicable Borrower at least one Business Day prior to the making of any Accommodation.

**“Borrowing”** means a borrowing consisting of one or more Advances.

**“Borrowing Notice”** has the meaning specified in 3.02(1).

**“Business”** means the provision of network access, domain names and other internet services.

**“Business Day”** means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario or Montréal, Québec and, where used in the context of (i) a Base Rate (Canada) Advance or Base Rate (United States) Advance, is also a day on which banks are not required or authorized to close in New York, New York; and (ii) a SOFR Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day that is only a U.S. Government Securities Business Day.

**“Canadian Borrower”** means Tucows.com Co., a Nova Scotia corporation and its successors and permitted assigns.

**“Canadian Dollars”** and **“Cdn.\$”** means lawful money of Canada.

**“Canadian Prime Rate”** means, for any day, the rate of interest per annum equal to the greater of (i) the per annum rate of interest publicly quoted or established as the **“prime rate”** of the Agent which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (ii) the average rate for Canadian Dollar banker’s acceptances having a term of one month that appears on Refinitiv Benchmark Services Limited (or such other page as is a replacement page for such banker’s acceptances) at approximately 10:00 a.m. (Toronto time) on such day plus 100 basis points per annum, adjusted automatically with each quoted or established change in such rate, all without the necessity of any notice to the Borrowers or any other Person.

**“Canadian Prime Rate Advance”** has the meaning specified in the definition of Advance.

**“Capital Expenditures”** of any Person means expenditures of such Person that, in accordance with GAAP, would be classified as capital expenditures.

**“Capital Lease Obligations”** of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Cash Collateralize”** means, to deposit in a deposit account subject to the control of the Agent or to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the Fronting Letter of Credit Lenders or Lenders, as collateral for Letter of Credit Obligations or obligations of Lenders to fund participations in respect of Letter of Credit Obligations, cash or deposit account balances or, if the Agent and the applicable Fronting Letter of Credit Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the applicable Fronting Letter of Credit Lender. **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Equivalents”** means (i) short-term obligations of, or fully guaranteed by, the government of the United States of America or Canada, (ii) short-term obligations of, or fully guaranteed by, the government of a State of the United States of America or of a Province of Canada, in each case having a rating of “A-” (or the then equivalent grade) or better by a nationally recognized rating agency, (iii) commercial paper having a rating of “A-” (or the then equivalent grade) or better by S&P or Moody’s, (iv) demand or current deposit accounts maintained in the ordinary course of business with any commercial bank, (v) certificates of deposit issued by and time deposits with any Schedule I Canadian chartered bank or any other commercial bank or trust company (whether domestic or foreign) having capital and surplus in excess of U.S.\$500,000,000 and a senior unsecured rating of “A-” or better by S&P or Moody’s, or (vi) money market funds that invest substantially all of their assets in any of the foregoing; provided in each case that the same has a term not exceeding (A) one year in the case of (i), (ii) and (v) above, and (B) 180 days in the case of (iii) and (vi) above.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any applicable Law, (b) any change in any applicable Law or in the administration, interpretation or application thereof by any Governmental Entity or (c) the making or issuance of any applicable Law by any Governmental Entity. Notwithstanding anything herein to the contrary, (a) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, and Basel Committee on Banking Supervision (or any successor or similar authority) or by United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, and (b) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (United States) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

**“Change of Control”** means (i) any Person or group of Persons acting in concert shall acquire control, directly or indirectly, of a majority by voting power of the issued and outstanding Equity Interests of the Parent having the right to vote for directors of the Parent; (ii) other than in the case of a Permitted Replacement, individuals who were elected as members of the board of directors of the Parent by the most recent resolutions of the shareholders of the Parent shall no longer constitute a majority of the board of directors of the Parent at any time prior to the next following resolutions of the shareholders of the Parent relating to the election of the same; (iii) any sale, lease, exchange or other transfer (in one transaction or series of related transactions) of all or substantially all the Parent and its Subsidiaries’ property and assets; or (iv) any Borrower or Guarantor shall cease to be a Wholly-Owned Subsidiary of the Parent (except as otherwise agreed to by the Majority Lenders).

**“Claims”** means all claims, demands, complaints, actions, suits, causes of action, assessments or reassessments, charges, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, professional fees, including fees of legal counsel on a solicitor and his or her own client basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

**“Closing Date”** means June 14, 2019.

**“Code”** means the Internal Revenue Code of 1986 (United States), as amended, and regulations promulgated thereunder.

**“Collateral”** means the Assets of a Loan Party in respect of which the Agent on its own behalf and on behalf of one or more of the Secured Parties has or will have a Lien pursuant to a Loan Document.

**“Committed”** means, for the purposes of Section 2.05(4), the Parent or its applicable Subsidiary shall have entered into a written agreement for the repair or replacement of the applicable affected property.

**“Commitment”** means U.S.\$240,000,000, as such amount may be increased or reduced pursuant to this Agreement, and a **“Lender’s Commitment”** means, at any time, the relevant amount designated as such and set forth under such Lender’s name on Schedule 10, in the assignment and assumption agreement executed and delivered pursuant to ARTICLE 18 pursuant to which it shall become a party hereto, or as otherwise increased or decreased pursuant to this Agreement.

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 USC § 1 et seq.) (United States) as amended from time to time and any successor statute.

**“Compliance Certificate”** means a certificate of an officer of the Parent substantially in the form attached hereto as Schedule 9.

**“Conforming Changes”** means with respect to either the use or administration of Daily Simple SOFR or Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate (Canada)” or “Base Rate (United States)” the definition of “Business Day,” the definition of “Interest Period”, the definition of “U.S. Government Securities Business Day”, the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Consolidated Basis”** means, in determining the results of operations or any amount in respect of any period or at any time, the results of operations or amounts, as applicable, with reference to the Parent and its Subsidiaries taken as a whole for such period or at such time. Notwithstanding the foregoing, Ting Fiber, LLC and each of its subsidiaries shall not be “Subsidiaries” of the Parent for purposes of this Agreement and the other Loan Documents and the results of which (and indebtedness of which) will not be included in the financial covenants hereunder.

**“Contracts”** means contracts, licences, leases, agreements, commitments, entitlements or engagements to which the Parent or any of its Subsidiaries is a party or by which any of them are bound or under which the Parent or any of its Subsidiaries has, or will have, any liability or contingent liability, and warranties or guarantees (express or implied), but excluding any Authorizations.

**“Credit Facility”** or **“Facility”** means, the revolving credit facility made available to the Borrowers by the Lenders in accordance with ARTICLE 2 for the purposes specified in Section 2.03.

**“Daily Simple SOFR”** means, for any day (a **“SOFR Rate Day”**), a rate per annum equal to SOFR for the day (such day, the **“SOFR Determination Day”**), that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; provided, however, that if as of 5:00 p.m. (New York City time) on any SOFR Determination Day Daily Simple SOFR for the applicable tenor has not been published by the SOFR Administrator and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then Daily Simple SOFR will be the Daily Simple SOFR as published by the SOFR Administrator on the first preceding U.S. Government Securities Business Day for which Daily Simple SOFR was published by the SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such SOFR Determination Day; provided, that to the extent such rate as determined above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein.

**“DBRS”** means DBRS Limited and DBRS Inc.

**“Default”** means an event which, with the giving of notice or passage of time, or both, would, unless cured or waived, constitute an Event of Default.

**“Defaulting Lender”** means, subject to Section 2.12(2), any Lender that (a) has failed to (i) fund all or any portion of its Accommodations within two (2) Business Days of the date such Accommodations were required to be funded hereunder unless such Lender notifies the Agent and the Parent 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 Agent, each Fronting Letter of Credit Lender, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Parent, the Agent or any Fronting Letter of Credit Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund an Accommodation 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 (3) Business Days after written request by the Agent or the Parent, to confirm in writing to the Agent and the Parent 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 Agent and the Parent), or (d) has, or has a direct or indirect parent company that has, at any time after the date hereof, (i) become the subject of a proceeding under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors including any plan of compromise or arrangement or other similar corporate proceeding involving or affecting its creditors, 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 Canada Deposit Insurance Corporation, Federal Deposit Insurance Corporation or any other provincial, state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender (x) solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Entity so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within Canada or the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Entity) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender, or (y) in the case of a Lender (or its direct or indirect parent company) that is Solvent, solely by virtue of the precautionary appointment of an administrator, guardian, custodian or similar official by a Governmental Entity under or based on the Law of the country where such Person is subject to home jurisdiction. Any determination by the Agent that a Lender is a Defaulting Lender under 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 2.12(2)) upon delivery of written notice of such determination to the Parent, each Fronting Letter of Credit Lender and each Lender.

**“Disposal”** means any disposal by any means including dumping, incineration, spraying, pumping, injecting, depositing or burying.

**“Disposition”** means, with respect to any Asset of any Person, any direct or indirect sale, assignment, cession, transfer (including any transfer of title or possession), exchange, conveyance, release or gift of such Asset, including by means of a Sale-Leaseback Transaction (unless accounted for as a Capital Lease Obligation) and including any such transfer arising on liquidation, dissolution or winding up of such Person; and **“Dispose”** and **“Disposed”** have meanings correlative thereto.

**“Distribution”** means any amount paid to or on behalf of the shareholders, partners or unitholders of any of the Parent or any of its Subsidiaries, or to any Related Party thereto, by way of management fees, dividends, redemption of shares, distribution of profits or otherwise, which payments are made to such Persons in their capacity as shareholders, partners, unitholders or owners of any of the Parent or any of its Subsidiaries or otherwise, or any other direct or indirect payment in respect of the earnings or capital of any of the Parent or any of its Subsidiaries to such Persons.

**“Division/Series Transaction”** shall mean, with respect to the Loan Parties and their Subsidiaries, that any such Person (a) divides into two or more Persons (whether or not the original Loan Party or Subsidiary thereof survives such division) or (b) creates, or reorganizes into, one or more series, in each case as contemplated under the laws of any jurisdiction.

**“Draft”** means, at any time, (i) a bill of exchange, within the meaning of the *Bills of Exchange Act* (Canada), drawn by the Canadian Borrower on a Lender and bearing such distinguishing letters and numbers as the Lender may determine; or (ii) a depository bill within the meaning of the *Depository Bills and Notes Act* (Canada).

**“Drawing”** means (i) the creation and purchase of Banker’s Acceptances by a Lender pursuant to ARTICLE 4; or (ii) the purchase of completed Drafts by a Lender pursuant to ARTICLE 4.

**“Drawing Date”** means any Business Day fixed for a Drawing pursuant to Section 4.03.

**“Drawing Fee”** means, with respect to each Draft drawn by the Canadian Borrower and purchased by any Lender on any Drawing Date, an amount equal to the Applicable Margin, multiplied by the product of (i) a fraction, the numerator of which is the number of days, inclusive of the first day and exclusive of the last day, in the term to maturity of such Draft, and the denominator of which is 365; and (ii) the Face Amount of such Draft.

**“Drawing Notice”** has the meaning specified in Section 4.03(1).

**“Drawing Price”** means, in respect of Drafts drawn by the Canadian Borrower to be purchased by one or more Lenders on any Drawing Date, the amount by which (i) the result (rounded to the nearest whole cent, with one-half of one cent being rounded up) obtained by dividing the aggregate Face Amount of the Drafts by the sum of one plus the product of (x) the Reference Discount Rate multiplied by (y) a fraction, the numerator of which is the number of days, inclusive of the first day and exclusive of the last day, in the term to maturity of the Drafts and the denominator of which is 365; exceeds (ii) the applicable aggregate Drawing Fee.

**“E-System”** means any electronic system approved by Agent, including Syndtrak®, Intralinks® and ClearPar® and any other Internet or extranet based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

**“EBITDA”** means, in respect of any fiscal period, without duplication (A) the consolidated net income of the Parent in such fiscal period determined without including or deducting (i) unrealized gains or losses arising from hedging agreements and other foreign currency transactions; (ii) gains or losses arising from or in connection with any sale or other disposition of assets outside the ordinary course of business; or (iii) gains or losses arising from or in connection with any revaluation of assets, or accretion of contingent consideration; plus (B) the following amounts (to the extent such accounts were deducted in determining such consolidated net income): Interest, income taxes, capital taxes, depreciation, amortization, stock based compensation, non-cash charges relating to the impairment of goodwill and other intangible assets and any other non-cash expenses and extraordinary, unusual or non-recurring expenses or acquisition and transaction costs approved in writing by the Majority Lenders in their discretion (but specifically including non-recurring professional fees and expenses relating to the establishment or restructuring of the Facilities); all determined in accordance with GAAP.

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

**“EEA Member Country”** 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

**“Eligible Assignee”** means, in the case of an assignment pursuant to Section 18.01, any Person (other than a natural person, any Loan Party, any Affiliate of a Loan Party, any Defaulting Lender or any Ineligible Transferee) that meets the criteria set out in Section 18.01(2).

**“Eligible Hedging Agreements”** means one or more interest rate or currency rate hedging agreements between a Loan Party and any Lender or an Affiliate of such Lender (collectively, the **“Hedge Lenders”**); provided that (a) any Swap Termination Value owing by such Hedge Lender upon designation of an Early Termination Date (as such term is defined in the ISDA Agreement), has been assigned to the Agent as security for the Secured Obligations, and (b) any such interest rate or currency rate hedging agreements entered into by a Loan Party and any Person at the time that such Person or Affiliate of such Person was a **“Lender”** hereunder shall continue to be an Eligible Hedging Agreement notwithstanding that such Person or Affiliate of such Person ceases, at any time, to be a **“Lender”** hereunder.

**“Environment”** includes the air, surface water, underground water, any land, soil or underground space even if submerged under water or covered by a structure, all living organisms and the interacting natural systems that include components of air, land, water, organic and inorganic matters and living organisms in the environment or natural environment as defined in any Environmental Law and **“Environmental”** shall have a similar extended meaning.

**“Environmental Law”** means all applicable and legally enforceable federal, state, provincial, municipal or local statutes, regulations, by-laws, and Orders of any Governmental Entity, any binding guidelines, policies or rules of any Governmental Entity relating in whole or in part to the Environment or the protection thereof and includes those laws relating to the storage, generation, use, handling, manufacturer, processing, transportation, import, export, treatment, Release, recycling or Disposal of any Hazardous Materials and any laws relating to asbestos or asbestos-containing materials in the Environment, in the workplace or in any building.

**“Environmental Liabilities”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of the Parent or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, recycling, treatment or Disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Environmental Permits”** means all permits, certificates, approvals, consents, authorizations, registrations and licences issued, granted, conferred or created by or acquired from any Governmental Entity pursuant to any Environmental Laws.

**“Equity Interests”** means (a) all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or non-voting, participating or non-participating, including common stock, preferred stock or any other equity security and (b) all securities convertible into or exchangeable for any other Equity Interests and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any other Equity Interests, whether or not presently convertible, exchangeable or exercisable.



**“Equivalent Amount”** means, on any date, with respect to the specified amount of any specified currency the amount of any other currency after giving effect to a conversion of the specified amount of the first currency to the other currency at the spot rate quoted for wholesale transactions by the Agent (or, if the Agent does not provide such spot rate quotation, a quoted rate from another financial institution selected by the Agent); provided that if the conversion is of Canadian Dollars to U.S. Dollars or of U.S. Dollars to Canadian Dollars, the rate used shall be the Bank of Canada rate for such a conversion as of the close of the Business Day on such date (as quoted or published from time to time by the Bank of Canada) if available.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

**“ERISA Affiliate”** means any entity (whether or not incorporated) that, together with the Parent or any of its Subsidiaries, is treated as a single employer under Section 414 of the Code.

**“ERISA Plan”** means an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to ERISA and that is sponsored or maintained by the Parent or any of its Subsidiaries or any ERISA Affiliate or with respect to which the Parent or any of its Subsidiaries or any ERISA Affiliate may have any liability (other than a Multiemployer Plan).

**“Erroneous Payment”** has the meaning assigned to it in Section 15.12(1).

**“Erroneous Payment Return Deficiency”** has the meaning assigned to it in Section 15.12(4).

**“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 specified in Section 10.01.

**“Excess”** has the meaning specified in Section 2.10.

**“Exchange Act”** means the Securities Exchange Act of 1934 (United States).

**“Exchange Rate Determination Date”** means the last Business Day of each calendar month.

**“Excluded Assets”** has the meaning specified in Section 6.06.

**“Excluded Swap Obligations”** means, with respect to the Parent or any of its Subsidiaries in its capacity as a Guarantor, any Swap Obligation if, and only to the extent that and for so long as, all or a portion of the Guarantee by such Person, or the grant by such Person, of a security interest in any of its Assets to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Person’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 by such Person or the grant by such Person of such security interest becomes effective with respect to such Swap Obligation; provided, however, that if any Guarantor that was not an “eligible contract participant” at the time any such guarantee of a Swap Obligation under an Eligible Hedging Agreement was entered into thereafter becomes an “eligible contract participant,” such Guarantor shall, by virtue of any applicable Pledge and Security Agreement or joinder thereto and without any further action by any Person, be deemed to have guaranteed the Swap Obligations under Eligible Hedging Agreements and granted a security interest to secure such Swap Obligations under Eligible Hedging Agreements, and such Swap Obligations under Eligible Hedging Agreements shall no longer constitute Excluded Swap Obligations with respect to such Guarantor. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or any application or official interpretation of any thereof).

**“Excluded Taxes”** means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower, the Guarantors or any of their Subsidiaries hereunder or under any Loan Document, (a) taxes imposed on or measured by its net income (however denominated) or capital, and franchise taxes and branch profits Taxes, in each case (i) imposed on it by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) are Other Connection Taxes, (b) any withholding tax payable as a result of such recipient not dealing at Arm’s Length with the Borrowers, the Guarantors or any of their Subsidiaries (other than when an Event of Default has occurred and is continuing), (c) Taxes imposed under FATCA and (e) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Parent under Section 11.03(2) or (ii) any other assignee to the extent that the Parent has expressly agreed, in its sole discretion, that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is imposed or assessed, and (B) is required by applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender where such applicable Law is in effect at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 11.02(5), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to Section 11.02(1).

**“Face Amount”** means (i) in respect of a BA Instrument, the amount payable to the holder on its maturity; and (ii) in respect of a Letter of Credit, the maximum amount which the Fronting Letter of Credit Lender is contingently liable to pay the Beneficiary.

**“FATCA”** means Sections 1471 through 1474 of the Code and any regulations or official interpretations thereof or any amended or successors version that is substantively comparable and not materially more onerous to comply with (including any Revenue Ruling, Revenue Procedure, Notice or similar guidance issued by the U.S. Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions), any agreements entered into pursuant to Section 1471(b)(1) of the Code or any fiscal or regulatory legislation, rules or official administrative practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

**“Federal Flood Insurance”** means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

**“Federal Funds Rate”** means, for any day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight United States Federal funds transactions with members of the Federal Reserve System arranged by United States Federal funds brokers, as published for the day (or if the day is not a Business Day, for the preceding Business Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day which is a Business Day, the average of the quotations for the day on such transactions received by the Agent from three United States Federal funds brokers of recognized standing selected by the Agent, acting reasonably.

**“Fees”** means the fees payable by the Parent, the Borrowers or any of their Subsidiaries under this Agreement or under any other Loan Document.

**“FEMA”** means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

**“Financial Quarter”** means, in respect of each of the Parent, the financial quarters ending March 31, June 30, September 30 and December 31.

**“Financial Year”** means, in respect of the Parent, its financial year commencing on January 1 of each calendar year and ending on December 31 of such calendar year.

**“Flood Insurance”** means, for any Material Owned Real Property (including any personal property Collateral located on such Material Owned Real Property) located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance reasonably satisfactory to Agent, in either case, that (a) meets the requirements of FEMA and any other applicable federal agencies, (b) includes a deductible not to exceed \$100,000 and (c) has a coverage amount equal to the lesser of (i) the insurable value of the buildings and any personal property Collateral located on such Material Owned Real Property as determined by Agent or (ii) the maximum policy limits set under the National Flood Insurance Program.

**“Flood Insurance Requirements”** means, with respect to any Material Owned Real Property, Agent shall have received: (i) evidence as to whether the applicable Material Owned Real Property is located in a Special Flood Hazard Area pursuant to a standard flood hazard determination form ordered and received by Agent, and (ii) if such Material Owned Real Property is located in a Special Flood Hazard Area, (A) evidence as to whether the community in which such Material Owned Real Property is located is participating in the National Flood Insurance Program, (B) the applicable Loan Party’s or Subsidiary’s written acknowledgment of receipt of written notification from Agent as to the fact that such Material Owned Real Property is located in a Special Flood Hazard Area and as to whether the community in which such Real Estate is located is participating in the National Flood Insurance Program and (C) copies of the applicable Loan Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance satisfactory to Agent and naming Agent as sole loss payee on behalf of the Secured Parties.

**“Floor”** means 0.00%.

**“Foreign Lender”** means, with respect to any Borrower, any Lender that is not resident for income tax or withholding tax purposes under the laws of the jurisdiction in which the Borrower is resident for tax purposes on the date hereof and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

**“FRB”** means the Board of Governors of the Federal Reserve System or any successor thereto.

**“Fronting Exposure”** means, at any time that there is a Defaulting Lender, with respect to any Fronting Letter of Credit Lender, such Defaulting Lender’s pro rata share of the outstanding Letter of Credit Obligations with respect to Letters of Credit issued by such Fronting Letter of Credit Lender, other than Letter of Credit Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders, Cash Collateralized in accordance with the terms hereof or otherwise mitigated in a matter reasonably satisfactory to the applicable Fronting Letter of Credit Lender.

**“Fronting Letter of Credit Lender”** means Royal Bank of Canada, and any successor thereto hereunder in such capacity.

**“Fronting Letter of Credit Lender’s Fronting Letter of Credit Commitment”** means, at any time, the relevant amount designated as such and set forth under such Lender’s name on Schedule 9 (or in respect of any other Lender, as otherwise agreed to by the Parent, the Agent and such Lender) or in the assignment and assumption agreement executed and delivered pursuant to ARTICLE 18 pursuant to which it shall become a party hereto (as reduced or increased in accordance with the terms hereof).

**“Funded Debt”** in respect of any Person means obligations of such Person which are considered to constitute debt in accordance with GAAP, including indebtedness for borrowed money (in the case of the Borrowers, specifically including the Accommodations Outstanding), Subordinated Debt, Purchase Money Obligations, Capital Lease Obligations, capitalized interest, and the redemption price of any securities issued by such Person having attributes substantially similar to debt (such as securities which are redeemable at the option of the holder); but excluding the following: accounts payable, future income taxes (both current and long-term), obligations under hedging agreements which have not yet become due and payable, and operating lease liabilities (both current and long-term); plus, in the case of the Parent, the Verizon Liability and any similar liabilities to other carriers.

**“GAAP”** means, generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination.

**“Governmental Entity”** means any (i) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, stock exchange, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) subdivision or authority of any of the foregoing, or (iii) quasi-governmental, public sector entity, supra-national entity (including the European Union and the European Central Bank), private body, self-regulatory organization (including the National Association of Insurance Commissioners) and any other entity exercising any executive, legislative, judicial, regulatory, expropriation, taxing or administrative authority under or for the account of any of the above.

**“guarantee”** means any agreement by which any Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes liable upon, the obligation of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person or otherwise assures any creditor of such Person against loss, and shall include any contingent liability under any letter of credit or similar document or instrument.

**“Guarantee”** means any guarantee delivered by any Person in connection herewith.

**“Guarantor”** means the Parent and each direct and indirect Subsidiary of the Parent that has (a) executed a Guarantee (or an addendum to a Guarantee or other guarantee agreement (in form and substance satisfactory to the Agent acting reasonably)) pursuant to which it (and any general partner thereof) has provided an unconditional and unlimited guarantee of the obligations of the Borrowers and the other Loan Parties under this Agreement and the other Loan Documents, (b) provided security in form and substance substantially similar to that delivered on the Closing Date by the Borrowers (as determined by the Agent acting reasonably); and (c) delivered to the Agent all resolutions (corporate, shareholder or otherwise), certificates and appropriate legal opinions as the Agent may reasonably request. Any of the foregoing entities shall cease to be a Guarantor in accordance with the provisions of this Agreement and the other Loan Documents, and “Guarantor” means any one of them as applicable. As at the date of this Agreement, the following are Guarantors for purposes hereof: Tucows.com Co., Ting Inc., Tucows Inc., Tucows (Delaware) Inc., Tucows Domains Inc., Tucows (Emerald), LLC, eNom, LLC, Wavelo, Inc., Ascio Technologies, Corp. and Tucows Domains Services, Inc. For the avoidance of doubt, subject to any express exclusions set forth herein or in any Guarantee, each Borrower also constitutes a Guarantor hereunder in respect of the obligations of the other Borrowers and the other Loan Parties under this Agreement and the other Loan Documents. Ting Fiber LLC, Ting Virginia, LLC, Blue Ridge Websoft, LLC, Fiber Roads, LLC, Navigator Network Services, LLC, Cedar Holdings Group Incorporated, Zippytech Incorporated, Zippytech of New Mexico Incorporated, Ting Telecom California LLC and Simply Bits, LLC shall cease to be Guarantors as of the date of this Agreement and shall automatically be released from their respective Guarantee and Security Documents, which shall be of no further force or effect with respect to such entities (and the Agent is hereby authorized and directed to execute and deliver such further and other documents as may be necessary to give effect thereto).

**“Hazardous Material”** means any and all (i) contaminants, pollutants, toxic or hazardous material or wastes (including petroleum and any by product or derivative thereof, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls); or (ii) substances which are or may be defined, prohibited or regulated by Environmental Laws, or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, Disposal, Release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited or penalized by any applicable Environmental Law.

**“Hedge Lender”** has the meaning specified in the definition of **“Eligible Hedging Agreements”**.

**“Indemnified Taxes”** means Taxes other than Excluded Taxes.

**“Ineligible Transferee”** means (i) certain Persons identified as “Disqualified Lenders” in writing to the Agent by the Parent on or prior to the Closing Date; and (ii) operating companies which are bona fide competitors of the Loan Parties or their Subsidiaries and such competitors’ subsidiaries and controlling equity holders (other than Bona Fide Debt Funds) as may be identified by name in writing to the Agent following the date of this Agreement (but only with the consent of the Majority Lenders, not to be unreasonably withheld), by delivery of notice to the Agent setting forth such person or persons. Notwithstanding the foregoing, no Person shall be regarded as an Ineligible Transferee for purposes of this Agreement at any time that an assignment or participation otherwise occurs in accordance with Section 18.01 while an Event of Default has occurred and is continuing.

**“Intellectual Property”** means all rights, title and interests in or relating to intellectual property and industrial property, whether registered or not, owned, licenced, used or held the Parent or any of its Subsidiaries, in respect of: (a) inventions, pending patent applications (including divisions, reissues, renewals, re-examinations, continuations, continuations-in-part and extensions) and issued patents; (b) trade-marks, trade dress, trade-names, business names and other indicia of origin; (c) copyrights; (d) industrial designs and similar rights; and (e) urls, domain names and tag lines.

**“Interest”** means interest on loans, stamping fees in respect of bankers’ acceptances, the difference between the proceeds received by the issuers of bankers’ acceptances and the amounts payable upon the maturity thereof, issuance fees in respect of letters of credit, and any other charges or fees in connection with the extension of credit which are determined by reference to the amount of credit extended, plus standby fees in respect of the unutilized portion of any credit facility; but for greater certainty “Interest” shall not include capitalized interest (for greater certainty, being interest which is accrued but not paid), agency fees, arrangement fees, structuring fees, fees relating to the granting of consents, waivers, amendments, extensions or restructurings, the reimbursement of costs and expenses, and any similar amounts which may be charged from time to time in connection with the establishment, administration or enforcement of the Credit Facility.

**“Interest Coverage Ratio”** means, in respect of any Financial Quarter, the ratio of (i) Adjusted EBITDA in the fiscal period comprised of such Financial Quarter and the immediately preceding three Financial Quarters; to (ii) Interest Expense in respect of such fiscal period.

**“Interest Expense”** means, in respect of any fiscal period, the aggregate amount of Interest paid or payable in respect of the Funded Debt of the Parent and its Subsidiaries on a consolidated basis in respect of such fiscal period (but for greater certainty, excluding any Interest which is capitalized and not paid or payable during such fiscal period).

**Interest Payment Date** means, as to any SOFR Loan, the last day of each Interest Period therefor and, in the case of any Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at three month intervals after the first day of such Interest Period, and on the maturity date; provided that, as to any such SOFR Loan, (i) if any such date would be a day other than a Business Day, such date 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 date shall be the next preceding Business Day and (ii) the Interest Payment Date with respect to any such SOFR Loan that occurs on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in any applicable calendar month) shall be the last Business Day of any such succeeding applicable calendar month.

**“Interest Period”** means the period commencing on the date a borrowing of any SOFR Loan is advanced, continued, or created by conversion and ending on the numerically corresponding day in the calendar month that is a period of one, three or six months (in each case, subject to the availability thereof), as specified in the applicable Borrowing Notice or Interest Rate Election Notice, provided, that (i) no Interest Period shall extend beyond the Repayment Date; (ii) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, provided that, if such extension would cause the last day of an Interest Period for a SOFR Loan to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; (iii) for purposes of determining an Interest Period for a SOFR Loan, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; provided, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end; and (iv) no tenor that has been removed from this definition pursuant to Section 3.06 shall be available for specification in such Borrowing Notice or Interest Rate Election Notice.

**“Interest Rate Election Notice”** has the meaning specified in Section 3.03(2).

**“Investment”** means: (i) an investment made or held by a Person, directly or indirectly, in another Person (whether such investment was made by the first-mentioned Person in such other Person or was acquired from a third party); (ii) a contribution of capital; (iii) the acquisition or holding of common or preferred shares, debt obligations, partnership interests and interests in joint ventures; provided however that if a transaction would constitute a “Capital Expenditure” as defined herein and would also constitute an “Investment” as defined herein, it shall be deemed to constitute an Investment and not a Capital Expenditure; and (iv) advances, loans, guarantees or other extensions of credit (other than in the ordinary course of business) or capital contributions or the provision of any other financial assistance of any kind to (by means of transfers of property, money or assets) any other Person, and, for greater certainty, includes any Debt of any other Person guaranteed by such Person.

**“Issue”** means an issue of a Letter of Credit by the Fronting Letter of Credit Lender pursuant to ARTICLE 5.

**“Issue Date”** has the meaning specified in Section 5.02.

**“Issue Notice”** has the meaning specified in Section 5.02.

**“Judicial Order”** has the meaning specified in Section 5.09(1).

**“Laws”** means all federal, state, local, or foreign law (statutory or common), statutes, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, restraints, guidelines, or other legal requirements or determinations of an arbitrator or of any Governmental Entity or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the Person (or any of such Person’s Assets) referred to in the context in which such word is used; and “Law” means any one of the foregoing.

**“Lenders”** means, collectively, the financial institutions and other Persons set forth on the signature pages hereof as Lenders (and for greater certainty shall include the Swingline Lender and the Fronting Letter of Credit Lenders, as applicable), and any Eligible Assignee thereof upon such Eligible Assignee executing and delivering an assignment and assumption agreement referred to in Section 18.01(2)(f) to the Parent and the Agent and in the singular any one of such Lenders.

**“Letter of Credit”** means a letter of credit or a bank letter of guarantee issued or to be issued by the Fronting Letter of Credit Lender for the account of a Borrower pursuant to ARTICLE 5 and in such form as the Fronting Letter of Credit Lender may from time to time approve.



**“Letter of Credit Obligations”** means, at any time, the sum of (a) an amount equal to the aggregate undrawn and unexpired amount (including the amount to which any such Letters of Credit can be reinstated pursuant to the terms hereof) of the then outstanding Letters of Credit and (b) an amount equal to the aggregate drawn, but unreimbursed drawings on any Letters of Credit.

**“Lien”** means liens, charges, mortgages, pledges, security interests, hypothecs, adverse claims, defects of title, deposit arrangements, any other similar rights of third parties relating to any Asset and any other similar lien of any kind that in substance secures payment and performance of an obligation.

**“Loan Document”** or **“Loan Documents”** means this Agreement, the Guarantees, the Pledge and Security Agreements, the other Security, the Eligible Hedging Agreements, the Other Secured Agreements and all other documents, certificates, fee letters, instruments and agreements to be executed and delivered to the Agent or the Lenders by any Loan Party as contemplated hereunder and thereunder or any one or more of such documents.

**“Loan Parties”** means, collectively, the Borrowers and the Guarantors, and **“Loan Party”** means any one of them.

**“Majority Lenders”** or **“Required Lenders”** means, at any time, Lenders whose Commitments, taken together, are greater than 66 2/3% of the aggregate amount of the Commitments of all Lenders. If at any time the Commitments of the Lenders have been cancelled, Majority Lenders/Required Lenders shall mean Lenders whose Accommodations Outstanding, taken together, is greater than 66 2/3% of the aggregate amount of the Accommodations Outstanding of all Lenders. For purposes of this definition, subject to Section 2.12(1)(i), any Defaulting Lender shall be disregarded in determining Majority Lenders/Required Lenders at any time.

**“Management Services Agreement”** means the intercompany administrative services agreement dated as of January 1, 2022 between Tucows Inc. and the Service Recipients (as defined therein).

**“Margin Stock”** means any “margin stock” as defined in Regulation T, U or X of the FRB.

**“Material Adverse Change”** means any change or event which: (i) constitutes a material adverse change in the business, operations, condition (financial or otherwise) or properties of the Parent and its Subsidiaries on a consolidated basis; (ii) is reasonably likely to materially impair the ability of the Loan Parties (taken as a whole) to timely and fully perform their obligations under the Loan Documents; or (iii) is reasonably likely to materially impair the ability of the Agent or the Lenders to enforce their rights and remedies under this Agreement or the Security.

**“Material Authorizations”** means, collectively (i) the Authorizations specified in Schedule 8.01(6); and (ii) any other Authorization of the Parent or any of its Subsidiaries, the breach, non-performance or cancellation of which or the failure of which to renew would reasonably be expected to have a Material Adverse Change, and individually, any one of such Authorizations.

**“Material Contracts”** means, collectively (i) the Contracts specified in Schedule 8.01(13); and (ii) any other Contract of the Parent or any of its Subsidiaries the breach, non-performance or cancellation of which or the failure of which to renew would reasonably be expected to have a Material Adverse Change, and individually, any one of such Contracts.

**“Material IP”** means, as of any date of determination, Intellectual Property of the Loan Parties that, individually or in the aggregate, is necessary in or material to the conduct of the business of the Parent and its Subsidiaries, taken as a whole.

**“Material Owned Real Property”** means any owned real property of a Loan Party that has a value in excess of \$5,000,000.

**“Maturity Date”** means, June 14, 2024.

**“Maximum Lawful Rate”** has the meaning specified in Section 3.05(c).

**“Minimum Collateral Amount”** means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of (i) the Fronting Exposure of all Fronting Letter of Credit Lenders with respect to Letters of Credit issued and outstanding at such time, or (ii) in the case of Cash Collateral provided pursuant to Section 5.10(1), the Fronting Exposure required to be cash collateralized pursuant to such Section, and (b) otherwise, an amount determined by the Agent and the Fronting Letter of Credit Lenders in their reasonable discretion.

**“Minor Title Defects”** in respect of any parcel of real property means encroachments, restrictions, easements, rights-of-way, servitudes and defects or irregularities in the title to such real property which are of a minor nature and which, in the aggregate, will not materially impair the use of such Land for the purposes for which such real property is held by the owner thereof.

**“MNPI”** has the meaning specified in Section 23.01(4).

**“Moody’s”** means Moody’s Investors Service, Inc. and its successors.

**“Mortgaged Property”** has the meaning specified in Section 6.02.

**“Multiemployer Plan”** means a “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA) that is subject to ERISA to which the Parent or any of its Subsidiaries or any ERISA Affiliate has an obligation to contribute or with respect to which the Parent or any of its Subsidiaries or any ERISA Affiliate may have any liability.

**“National Flood Insurance Program”** means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that, among other things, mandates the purchase of flood insurance to cover real property improvements and contents located in Special Flood Hazard Areas in participating communities and may provide protection to property owners through a federal insurance program.

**“Net Proceeds”** means any one or more of the following:

(a) with respect to any Asset Sales by the Parent or any of its Subsidiaries, the net amount equal to the aggregate amount received in cash in connection with such Disposition (including, without limitation, the release of any amount from an indemnity reserve, escrow or similar fund established in connection with such Disposition, but only as and when received), less the sum of reasonable fees, including reasonable accounting, advisory (including investment banking fees) and legal fees, commissions and other out-of-pocket expenses, a provision of taxes attributable to such Disposition and costs associated with the repayment of Funded Debt (as evidenced by supporting documentation provided to the Agent) or the unwinding of any hedge agreements incurred or paid for by the Parent or any of its Subsidiaries in connection with such Disposition;

(b) with respect to the receipt of proceeds under any insurance policy (other than business interruption insurance or liability policy), the net amount equal to the aggregate amount received (or receivable) in cash by the Parent or any of its Subsidiaries in connection with such insurance proceeds less a provision for taxes attributable to such insurance proceeds;

(c) with respect to the issuance of any Equity Interests by any Person or of any capital contributions by any Person in such Person, the net amount equal to the aggregate amount received in cash in connection with such issuance or contribution by any Person in such Person, less the sum of reasonable fees, including reasonable accounting, advisory (including investment banking fees) and legal fees, commissions and other out-of-pocket expenses and costs associated with repayment of Funded Debt (as evidenced by supporting documentation provided to the Agent) or the unwinding of any hedge agreements incurred or paid for by such Person in connection with the issuance of any such Equity Interests or of any capital contributions by any Person in such Person; and

(d) with respect to the incurrence of any Funded Debt by any Person, the net amount equal to the aggregate amount received in cash in connection with such incurrence by such Person, less the sum of reasonable fees, including reasonable accounting, advisory (including investment banking fees) and legal fees, commissions and other out-of-pocket expenses and costs associated with repayment of any Funded Debt (as evidenced by supporting documentation provided to the Agent) or the unwinding of any hedge agreements incurred or paid for by such Person in connection with the of such Funded Debt by such Person.

**“Non-Defaulting Lender”** means, at any time, a Lender that is not a Defaulting Lender at such time.

**“Order”** means any binding order, judgment, injunction, decree, award or writ of any court, tribunal, arbitrator or Governmental Entity.

**“Other Connection Taxes”** means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower, the Guarantors or any of their Subsidiaries hereunder or under any Loan Document, 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 Document).

**“Other Secured Agreements”** means all agreements or arrangements (including guarantees) entered into or made from time to time by the Parent or any of its Subsidiaries in connection with: (a) cash consolidation, cash management and credit card agreements and electronic fund transfer arrangements between the Parent or any of its Subsidiaries and the Agent or any Lender or any Affiliate thereof (collectively, “Service Lenders”), (b) daylight facility arrangements between the Parent or any of its Subsidiaries and any Service Lender, (c) bilateral letter of credit facilities provided by one or more of the Lenders identified by the Borrower to the Agent for purposes of this clause (c) provided that the face amount of letters of credit outstanding thereunder does not exceed U.S.\$200,000 in the aggregate for all such bilateral credit facilities (and including for purposes thereof that certain facility letter dated March 3, 2020 between Tucows (Delaware) Inc. and HSBC Bank Canada establishing a U.S.\$100,000 letter of guarantee facility), and (d) other transactions not made under this Agreement between the Parent or any of its Subsidiaries and any Service Lender if it is agreed pursuant to a written agreement signed by the Parent and the Agent (and the Agent is acting on the instructions of all of the Lenders) that such debts, liabilities and obligations shall be secured; and, for greater certainty, all such agreements and arrangements entered into or made by the Parent or any of its Subsidiaries with or in favour of any Person at the time that such Person was an “Agent” or a “Lender” hereunder shall not cease to be an Other Secured Agreement if such Person ceases to be an Agent or a Lender hereunder.

**“Other Secured Obligations”** means, obligations owed by the Parent or any of its Subsidiaries in respect of any Other Secured Agreements, excluding Excluded Swap Obligations.

**“Other Taxes”** means all present or future stamp or documentary taxes or any other value-added, excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment pursuant to a request by the Parent under Section 11.03(2)).

**“Owned Intellectual Property”** means, the Intellectual Property specified as such in Schedule 8.01(22).

**“Participant”** has the meaning specified in Section 18.01(4).

**“Participant Register”** has the meaning specified in Section 18.01(3).

**“Patriot Act”** has the meaning set out in Section 20.01(4).

**“Payment Notice”** has the meaning assigned to it in Section 15.12(2).

**“Payment Recipient”** has the meaning assigned to it in Section 15.12(1).

**“Payment Reduction Notice”** has the meaning set out in Section 2.06(1).

**“Pension Plan”** means (i) each pension plan required to be registered under Canadian federal or provincial law that is maintained or contributed to by the Parent or any of its Subsidiaries for its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively and (ii) any plan (including, without limitation, an ERISA Plan, a Multiemployer Plan and a Title IV Plan), fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside Canada by the Parent or any of its Subsidiaries primarily for the benefit of employees of such party residing outside Canada, which plan, fund or other similar program provides, or results in, retirement income or a deferral of income in contemplation of retirement.

**“Permitted Acquisition”** means an Acquisition of Equity Interests in a Person (referred to herein as a “share purchase”), or an Acquisition of assets of a Person (referred to herein as an “asset purchase”), in either case if all of the following criteria are satisfied (except to the extent as may be otherwise agreed in writing by the Majority Lenders in their discretion):

- (a) the Majority Lenders in their discretion shall have provided their prior written consent to such Acquisition after conducting such due diligence they may consider appropriate in the circumstances within a reasonable period of time prior to the closing of such Acquisition to permit the review thereof by the Agent and the Lenders; provided however that the prior written consent of the Majority Lenders shall not be required in connection with an Acquisition (hereinafter referred to as a “small Acquisition”) if (i) all other criteria listed in this definition are satisfied in respect of such Acquisition; (ii) the purchase price for such Acquisition plus the amount of any Funded Debt assumed in connection therewith does not exceed \$25,000,000; and (iii) the aggregate purchase price for such Acquisition and all other small Acquisitions previously completed in the same Financial Year plus the amount of all Funded Debt assumed in connection therewith does not exceed \$50,000,000;
- (b) such Person is engaged in a business similar to one or more of the businesses conducted by the Borrowers as at the date of this Agreement;
- (c) the Acquisition does not involve a hostile or unsolicited take-over;
- (d) the Acquisition shall be accretive to Adjusted EBITDA on a twelve-month pro forma prospective basis, after giving effect to (i) normalization adjustments and (ii) pro forma synergies reasonably expected to result from such Acquisition, in each case as may be advised by Parent and approved by the Required Lenders;
- (e) in the case of a share purchase, immediately thereafter such Person will be a Wholly-Owned Subsidiary of the Parent;
- (f) in the case of a share purchase (i) upon the completion of such Acquisition all Funded Debt (except Funded Debt which will constitute Permitted Funded Debt hereunder) of such Person shall be repaid and the holders of all Liens (except Liens which will constitute Permitted Liens hereunder) affecting the assets of such Person shall provide an undertaking to release and discharge such Liens within thirty (30) days thereafter; and (ii) within thirty (30) days following the completion of such Acquisition all Liens (except Liens which will constitute Permitted Liens hereunder) affecting the assets of such Person shall be released and discharged and such Person shall provide a Guarantee and Security as may be required pursuant to the terms hereof to be provided by a Subsidiary of the Parent hereunder (including registrations, searches, legal opinions and ancillary documentation);

- (g) in the case of an asset purchase, (i) upon the completion of such Acquisition all Funded Debt (except Funded Debt which will constitute Permitted Funded Debt hereunder) secured by the acquired assets shall be repaid and the holders of all Liens (except Liens which will constitute Permitted Liens hereunder) affecting such assets shall provide an undertaking to release and discharge such Liens within thirty (30) days thereafter; and (ii) within thirty (30) days following the completion of such Acquisition all Liens (except Liens which will constitute Permitted Liens hereunder) affecting such assets shall be released and discharged and all Security required herein to be provided to the Agent in respect of such assets (including registrations, searches, legal opinions and ancillary documentation) shall be provided;
- (h) the Acquisition does not involve the assumption of any material Environmental Liabilities, and all representations and warranties contained herein with respect to environmental matters shall be true and correct both immediately before and immediately after such Acquisition;
- (i) the Parent and the other Loan Parties are in compliance with all covenants and representations and warranties in all material respects under this Agreement and the other Loan Documents and will remain in compliance after giving effect to such Acquisition; and no Default or Event of Default shall have occurred and be continuing or would result from the completion of such Acquisition; and
- (j) if the Parent or any of its Subsidiaries proposes to incur Subordinated Debt to finance all or any portion of such Acquisition, the terms and conditions of such Subordinated Debt shall be satisfactory to the Majority Lenders, and the holder(s) of such Subordinated Debt shall enter into a subordination and postponement agreement with the Agent containing terms and conditions contemplated in the definition of "Subordinated Debt" herein;

and provided further that if any such transaction would constitute both a Capital Expenditure and a Permitted Acquisition, it shall be deemed to constitute a Permitted Acquisition and not a Capital Expenditure.

**"Permitted Funded Debt"** means, without duplication: (i) the Accommodations Outstanding; (ii) indebtedness of the Parent to any one or more of its Subsidiaries or between Subsidiaries of the Parent; (iii) Subordinated Debt; (iv) Funded Debt of the Parent and its Subsidiaries secured by Permitted Liens; (v) the Verizon Liability and other similar liabilities to other carriers in an aggregate amount not to exceed \$7,500,000 at any time; (vi) obligations under any guarantees which are considered to constitute Funded Debt, but only to the extent such guarantees are permitted pursuant to this Agreement; (vii) Capitalized Lease Obligations in an aggregate amount not to exceed \$15,000,000 at any time; (viii) daylight loans incurred by the Borrower or any of its Subsidiaries to any Lender for bona fide tax planning or cash management purposes; (ix) indebtedness of any Person that becomes a subsidiary after the Closing Date; 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 principal amount of indebtedness permitted by this part (ix) shall not exceed \$5,000,000 at any time outstanding; and (x) other indebtedness in an amount not to exceed \$2,500,000 at any time.

**“Permitted Liens” means:**

- (a) Statutory Liens in respect of any amount which is not at the time overdue;
- (b) Statutory Liens in respect of any amount which may be overdue but the validity of which is being contested in good faith and in respect of which reserves have been established in accordance with GAAP;
- (c) Liens or rights of distress reserved in or exercisable under any lease for rent not at the time overdue or for compliance with the terms of such lease not at the time in default; and security deposits given under leases not in excess of six (6) months’ rent;
- (d) any obligations or duties affecting any real property due to any public utility or to any municipality or government, or to any statutory or public authority, with respect to any franchise, grant, licence or permit in good standing and any defects in title to structures or other facilities arising solely from the fact that such structures or facilities are constructed or installed on real property under government permits, leases or other grants in good standing; which obligations, duties and defects in the aggregate do not materially impair the use of such property, structures or facilities for the purpose for which they are held;
- (e) Liens incurred or deposits of cash made or pledged to secure obligations under workers’ compensation legislation or similar legislation, or in connection with contracts, bids, tenders or expropriation proceedings, surety or appeal bonds, costs of litigation when required by law, public and statutory obligations, and warehousemen’s, storers’, repairers’, carriers’ and other similar Liens and deposits;
- (f) security given to a public utility or any municipality or government or to any statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not at the time overdue;
- (g) Liens and privileges arising out of judgments or awards in respect of which: an appeal or proceeding for review has been commenced; a stay of execution pending such appeal or proceedings for review has been obtained; and reserves have been established in accordance with GAAP;
- (h) any Lien arising in connection with the construction or improvement of any real property or arising out of the furnishing of materials or supplies therefor, provided that such Lien secures moneys not at the time overdue (or if overdue, the validity of which is being contested in good faith and in respect of which and reserves have been established as reasonably required by the Majority Lenders), notice of such Lien has not been given to the Agent or any Lender and such Lien has not been registered against title to such real property;

- (i) Minor Title Defects;
- (j) Permitted Purchase-Money Obligations;
- (k) Liens securing Capital Lease Obligations permitted hereunder provided such Liens attach only to the assets (and proceeds therefrom) that are the subject matter of such Capital Lease Obligations;
- (l) the Security;
- (m) Liens securing Subordinated Debt; and
- (n) any other Liens on property not otherwise permitted by this definition so long as neither (i) the aggregate principal amount of the indebtedness and other obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds \$5,000,000 at any time outstanding;

provided that the use of the term “Permitted Liens” to describe the foregoing Liens shall mean that such Liens are permitted to exist (whether in priority to or subsequent in priority to the Security, as determined by Applicable Law); and for greater certainty such Liens shall not be entitled to priority over the Security by virtue of being described in this Agreement as “Permitted Liens”.

**“Permitted Purchase-Money Obligations”** means Purchase Money Obligations incurred or assumed in compliance with the provisions of this Agreement (for greater certainty, including the restrictions relating to Capital Expenditures contained in Section 9.02) in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business, provided that the aggregate amount of the Parent and its Subsidiaries liability thereunder is not at any time greater than \$1,000,000.

**“Permitted Replacement”** means the replacement of those directors who (a) have died, (b) have been found to be of unsound mind, or (c) resigned not as a result of any disagreement with the Parent or any of its Subsidiaries on any matter relating to its operations, policies or practices.

**“Person”** means a natural person, partnership, corporation, company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns that have a similarly extended meaning.

**“Pledge and Security Agreement”** has the meaning specified in Section 6.01(ii).

**“PPSA”** means the Personal Property Security Act (Ontario) as from time to time in effect; provided, that if attachment, perfection or priority of the Agent’s security interests are governed by the personal property security laws of any jurisdiction other than Ontario, “PPSA” shall mean those personal property security laws in such other jurisdiction or, in the case of Quebec, other applicable law governing security interest in personal property.



**“Prime Rate”** means the per annum rate of interest established from time to time by the Agent as the reference rate of interest in effect at its principal office in Toronto for the determination of interest rates that the Agent will charge for commercial loans in U.S. Dollars made in (i) Canada in respect of the Canadian Borrower; and (ii) in the United States, in respect of the U.S. Borrowers. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective].

**“Public Lender”** has the meaning specified in Section 23.01(4).

**“Purchase Money Obligation”** means, in respect of any Person, any Lien charging property acquired by such Person, which is granted or assumed by such Person, reserved by the transferor or which arises by operation of Law in favour of the transferor concurrently with and for the purpose of the acquisition of such property, in each case where: (i) the principal amount secured by such security interest is not in excess of the cost to such Person of the property acquired and costs associated with such acquisition; and (ii) such security interest extends only to the property acquired and the proceeds therefrom.

**“Reference Discount Rate”** means, for any Drawing Date, in respect of any Banker’s Acceptances or Drafts to be purchased pursuant to ARTICLE 4 by (i) a Lender which is a *Bank Act* (Canada) Schedule I bank (and ATB Financial for purposes of this clause (i)), the arithmetic average of the discount rates (calculated on an annual basis) for Canadian Dollar Banker’s Acceptances having an aggregate Face Amount equal to and with a term equal or comparable to such Banker’s Acceptances or Drafts that appears on Refinitiv Benchmark Services Limited (or such other page as is a replacement page for such banker’s acceptances) at approximately 10:00 a.m. (Toronto time) on such date (as adjusted by the Agent after 10:00 a.m. (Toronto time) to reflect any error in any posted rate or in the posted average annual rate subsequently identified by Refinitiv Benchmark Services Limited); or (ii) any other Lender, the rate specified in (i) plus 0.10%. If the rate in item (i) of this definition of **“Reference Discount Rate”** is not available as at the specified time, then the discount rate in respect of the Banker’s Acceptances and Drafts referred to therein shall mean the discount rate (calculated on an annual basis) quoted by the Agent at approximately 10:00 a.m. (Toronto time) as the discount rate at which the Agent is offering to purchase, on the relevant Drawing Date, its own Banker’s Acceptances or Drafts having an aggregate Face Amount equal to and with a term to maturity equal or comparable to the Banker’s Acceptances or Drafts to be acquired pursuant to item (i). If the Reference Discount Rate determined pursuant to the foregoing for any period is less than 0%, the Reference Discount Rate for purposes of this Agreement for such period shall be deemed to be 0%.

**“Register”** has the meaning specified in Section 18.01(3).

**“Related Party”** means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees and agents of such Person and such Person’s Affiliates.

**“Release”** means, releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, migrating, escaping, leaching, disposing, dumping, depositing, spraying, burying, abandoning, incinerating, seeping or placing, or any similar action defined in any Environmental Law.

**“Replacement Lender”** has the meaning specified in Section 2.13.

**“S&P”** means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc.

**“Sale-Leaseback Transaction”** means, with respect to any Person, any direct or indirect arrangement entered into after the Closing Date pursuant to which such Person (or one or more of its Affiliates) transfers or causes the transfer of any Assets to another Person and leases such Assets back from such Person.

**“SEC”** means the U.S. Securities and Exchange Commission, or any Governmental Entity succeeding to any of its principal functions.

**“Secured Obligations”** has the meaning specified in Section 6.04.

**“Secured Parties”** means, collectively, the Agent, the Lenders, the Hedge Lenders and the Service Lenders, and individually any one of them.

**“Security”** has the meaning specified in Section 6.01.

**“Service Lenders”** has the meaning specified in the definition of Other Secured Agreements herein.

**“Share Repurchases”** means purchases by the Parent of its issued and outstanding Equity Interests.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”** means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“SOFR Determination Day”** has the meaning set forth in the definition of “Daily Simple SOFR”.

**“SOFR Loan”** means an Advance bearing interest based on (i) Adjusted Daily Simple SOFR, or (ii) Adjusted Term SOFR, other than pursuant to clause (iii) of the definition of “Base Rate (Canada)” or “Base Rate (United States)”, as applicable.

**“SOFR Rate Day”** has the meaning set forth in the definition of “Daily Simple SOFR”.

**“Solvent”** means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property (for the avoidance of doubt, calculated to include goodwill and other intangibles) of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, and (b) such Person is able to pay its debts and liabilities as they mature. The amount of contingent liabilities at any time shall be computed as the amount that, in the 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.

**“Special Flood Hazard Area”** means an area that FEMA has designated as an area subject to special flood hazards, the current standard for which is at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100 year flood) in any given year, as per the applicable flood maps.

**“Statutory Lien”** means a Lien in respect of any property or assets of the Parent or any of its Subsidiaries created by or arising pursuant to any applicable legislation in favour of any Person (such as but not limited to a Governmental Entity), including, without limitation, a Lien for the purpose of securing such Person’s obligation to deduct and remit employee source deductions and goods and services tax pursuant to the Income Tax Act (Canada), the Excise Tax Act (Canada), the Canada Pension Plan (Canada), the Employment Insurance Act (Canada) and any legislation in any jurisdiction similar to or enacted in replacement of the foregoing from time to time.

**“Steps Plan”** means that certain “Project Lighthouse” steps plan prepared by Tucows Inc. dated as of August 5, 2022 describing the 2022 Reorganization and related equity investment in Ting Fiber, LLC by Generate Capital and its related affiliates.

**“Subordinated Debt”** means indebtedness of the Parent or any of its Subsidiaries to any Person which the Lenders in their sole discretion have consented to in writing and in respect of which the holder thereof has entered into a subordination and postponement agreement in favour of the Agent in form and substance satisfactory to the Agent and registered in all places where necessary or desirable to protect the priority of the Security, which shall provide (among other things) that: (i) the maturity date of such indebtedness is later than the Maturity Date; (ii) the holder of such indebtedness may not receive any payments on account of principal or interest thereon (except to the extent, if any, expressly permitted therein); (iii) any security held in respect of such indebtedness is subordinated to the Security; (iv) the holder of such indebtedness may not take any enforcement action in respect of any such security (except to the extent, if any, otherwise expressly provided therein) without the prior written consent of the Agent; and (v) any enforcement action taken by the holder of such indebtedness will not interfere with the enforcement action (if any) being taken by the Agent in respect of the Security.

**“Subsidiary”** or **“subsidiary”** means, in respect of any Person, (i) any corporation or company of which at least a majority of the outstanding securities having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation or company is at the time directly, indirectly or beneficially owned or controlled by the Person, or one or more of its subsidiaries, or the Person and one or more of its subsidiaries; (ii) any partnership of which, at the time, the Person, or one or more of its subsidiaries, or the Person and one or more of its subsidiaries directly, indirectly or beneficially own or control at least a majority of the voting interests (however designated) thereof, or otherwise control such partnership; and (iii) any other Person of which at least a majority of the voting interests (however designated) are at the time directly, indirectly or beneficially owned or controlled by the Person, or one or more of its subsidiaries, or the Person and one or more of its subsidiaries. For greater certainty, Ting Fiber, LLC and its subsidiaries shall not be “Subsidiaries” of the Parent for purposes of this Agreement (including, without limitation and for the avoidance of doubt, by being carved-out of the representation and warranties, positive and negative covenants and events of default) and the other Loan Documents unless otherwise specified herein or therein.

**“SOFR Rate Day”** has the meaning set forth in the definition of “Daily Simple SOFR”.

**“Swap Obligation”** means 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.

**“Swap Termination Value”** means, in respect of any one or more Eligible Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Eligible Hedging Agreements, (a) for any date on or after the date such Eligible Hedging 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 (a), the amount(s) determined as the mark-to-market value(s) for such Eligible Hedging Agreements, as determined by the applicable Hedge Lender using its good faith, commercially reasonable estimates at mid-market and in accordance with customary methods for calculating mark-to-market values for substantially similar agreements by leading dealers in the relevant market, which may include one or more of the following types of information: (a) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties; and (b) relevant market data in the relevant markets supplied by one or more third parties, including without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market.

**“Swingline Advance”** means a Canadian Prime Rate Advance, a Base Rate (Canada) Advance or a Base Rate (United States) Advance, as applicable, made to a Borrower, in each case by the Swingline Lender pursuant to ARTICLE 3; provided that, for the purposes of determining the applicable Canadian Prime Rate, Base Rate (Canada) or a Base Rate (United States) applicable to such Advance, the definitions thereof shall be read with reference to the “Swingline Lender” instead of the “Agent”.

**“Swingline Commitment”** means \$10,000,000 in the aggregate and for greater certainty, the Swingline Commitment forms part of the Commitment. The Swingline Commitment of each Swingline Lender shall be in an amount as agreed by such Swingline Lender, the Agent and the Borrower from time to time, and Schedule 9 hereto shall be automatically amended to reflect such Swingline Commitment amount upon such agreement; provided that the Swingline Commitment may be reallocated no more than two (2) times in any Financial Quarter, unless otherwise agreed by the Agent. For the avoidance of doubt, the Swingline Commitments of all Swingline Lenders shall not exceed \$10,000,000 in the aggregate.

**“Swingline Lender”** means Royal Bank of Canada, Bank of Montreal, and any other Lender that may be agreed between such Lender, the Agent and the Borrower from time to time. Each reference to “the Swingline Lender” herein shall be deemed to refer to “each Swingline Lender” or “the applicable Swingline Lender, as the case may be”, as applicable.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Entity, including any interest, additions to tax or penalties applicable thereto.

**“Term SOFR”** means, for the applicable tenor, the Term SOFR Reference Rate on the day (such day, the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (a) in the case of SOFR Loans, the first day of such applicable Interest Period, or (b) with respect to Base Rate (Canada) or Base Rate (United States), as applicable, such day of determination of the Base Rate (Canada) or Base Rate (United States), as applicable, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

**“Term SOFR Administrator”** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

**“Term SOFR Reference Rate”** means the per annum forward-looking term rate based on SOFR.

**“Title IV Plan”** means an ERISA Plan that is subject to Title IV of ERISA.

**“Total Funded Debt”** means, any time, the Funded Debt of Parent and its Subsidiaries on a consolidated basis at such time, specifically including for greater certainty the Accommodations Outstanding, Subordinated Debt, the Verizon Liability and other similar liabilities to other carriers at such time.

**“Total Funded Debt to Adjusted EBITDA Ratio”** means, at any time, the ratio of (i) Total Funded Debt at such time less cash or Cash Equivalents of the Parent and Guarantors in an aggregate amount of not more than \$5,000,000 on deposit with the Agent or one or more of the Lenders in respect of which the Agent (for the benefit of itself and the other Secured Parties) has a first priority Lien; to (ii) Adjusted EBITDA for the immediately preceding four Financial Quarters in respect of which the Parent has delivered a Compliance Certificate hereunder.

**“Type”** has the meaning specified in the definition of “Accommodation” or “Advance”, as the case may be, herein.

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

“U.S. Borrowers” means, Tucows (Delaware) Inc., a Delaware corporation, Wavelo, Inc. (formerly named Tucows Corp.), a Delaware corporation, and Ting Inc., a Delaware corporation, and Tucows (Emerald), LLC, a Delaware limited liability company, and individually any one of them as applicable, in each case, and its successors and permitted assigns.

“U.S. Dollars” and “U.S.\$” means lawful money of the United States of America.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Verizon Agreement” means the Wholesale Agreement between Ting Inc. and Cellco Partnership d/b/a Verizon Wireless dated July 2, 2019, (as amended, restated, supplemented or replaced).

“Verizon Liability” means, at any time, the cumulative amount payable by the Parent and its Subsidiaries at such time to Cellco Partnership d/b/a Verizon Wireless pursuant to the Verizon Agreement (for greater certainty, after deduction of the cumulative amount spent by the Parent and its Subsidiaries on network services thereunder) as determined in accordance with the Verizon Agreement.

“Wholly-Owned Subsidiary” means, in respect of any Person, at any time, any Subsidiary, 100% of all of the equity interests (except directors’ qualifying shares) and voting interests of which issued and outstanding shares of the capital stock of, or in the case of a partnership or any other legal entity, where all of the outstanding partnership or other ownership interests, are owned by the Person or one or more of the Person and the Person’s other Wholly-Owned Subsidiaries at such time.

“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.

#### **Section 1.02. Gender and Number.**

Any reference in the Loan Documents to gender includes all genders, and words importing the singular number only include the plural and vice versa.

**Section 1.03. Interpretation not Affected by Headings, etc.**

The provisions of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

**Section 1.04. Currency.**

All references in the Loan Documents to dollars or \$, unless otherwise specifically indicated, are expressed in United States Dollars.

**Section 1.05. Certain Phrases, etc.**

In any Loan Document (i) (y) the words “including” and “includes” mean “including (or includes) without limitation” and (z) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to (or until) but excluding”.

**Section 1.06. Accounting Terms.**

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP. If any accounting changes occur and such changes result in a material change in the calculation of the financial covenants, standards or terms used in this Agreement or any other Loan Document (other than Eligible Hedging Agreements or Other Secured Agreements), then the Parent, the Agent and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement or such Loan Document, as applicable, so as to equitably reflect such accounting changes with the desired result that the criteria for evaluating the Parent’s financial condition shall be the same after such accounting changes as if such accounting changes had not been made; provided, however, that the agreement of the Majority Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. If the Parent and the Majority Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying accounting change with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document (other than Eligible Hedging Agreements or Other Secured Agreements) shall, only to the extent of such accounting change, refer to GAAP, consistently applied after giving effect to the implementation of such accounting change. If the Parent and the Majority Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any accounting change, then all calculations of financial covenants and other standards and terms in this Agreement and the other Loan Documents shall continue to be prepared, delivered and made without regard to the underlying accounting change. In such case, the Parent shall, in connection with the delivery of any financial statements under this Agreement, provide a management prepared reconciliation of the financial covenants to such financial statements in light of such accounting changes. To the extent that the Parent shall deliver any financial statements hereunder which contain amounts in any currency other than Canadian Dollars in respect of any period, for the purposes of determining compliance with the standards and terms in this Agreement and the other Loan Documents which are denominated in Canadian Dollars figures, such amounts will be converted into Canadian Dollars based upon the average of the Bank of Canada noon spot rate (or other rate determined by the Agent if such spot rate is not available) for the applicable period, unless expressly stated otherwise.

**Section 1.07. Non-Business Days.**

Except as otherwise specified herein, in any Loan Document, whenever any payment, report, notice or other deliverable is stated to be due on a day which is not a Business Day, such payment, report, notice or other deliverable shall be deemed to be due on the next succeeding Business Day (for greater certainty, it being understood that any applicable interest and Fees shall accrue in respect of such succeeding Business Day and shall be added to the next payment of interest and Fees required to be made hereunder).

**Section 1.08. Incorporation of Schedules.**

The schedules attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

**Section 1.09. Reference to Agent or Lenders.**

Any reference in any Loan Document to the Agent or a Lender shall be construed so as to include its permitted successors, transferees or assigns hereunder in such capacity, in accordance with their respective interests.

**Section 1.10. References to Time of Day.**

Except as otherwise specified herein, a time of day shall be construed as a reference to Toronto, Canada time.

**Section 1.11. References to Applicable Laws.**

Except as otherwise provided herein, any reference in any Loan Document to Laws shall be construed to be a reference to such Laws as the same may have been, or may from time to time be, enacted, promulgated, amended, reformed or otherwise modified or re-enacted from time to time.

**Section 1.12. References to Agreements.**

Except as otherwise provided herein, any reference in any Loan Document to this Agreement, any other Loan Document or any other agreement or document shall be construed to be a reference to this Agreement, such Loan Document or such other agreement or document, as the case may be, as the same may have been, or may from time to time be, amended, varied, restated, supplemented or otherwise modified in accordance with the terms herein or therein (if applicable).



### **Section 1.13. Rateable Portion of Accommodations.**

References in this Agreement to a Lender's rateable portion of Commitments or Accommodations or rateable share of payments of principal, interest, Fees or any other amount, shall mean and refer to a rateable portion or share as nearly as may be rateable in the circumstances, as determined in good faith by the Agent. Each such determination by the Agent shall be *prima facie* evidence of such rateable share.

### **Section 1.14. Amendment and Restatement.**

This Agreement amends the Original Credit Agreement and restates and consolidates in this Agreement the terms and provisions of the Original Credit Agreement as so amended, and represents the entire agreement currently constituted between the parties hereto respecting the subject matter of the Original Credit Agreement. All references, if any, to the Original Credit Agreement in any of the other Loan Documents, and in all other agreements, documents and instruments delivered by the Loan Parties or any other Person in connection with any of the Loan Documents, shall mean and be a reference to this Agreement as this Agreement may from time to time in the future be further amended, supplemented, restated or replaced. The parties hereto acknowledge and agree that (i) this Agreement and the other agreements, documents and instruments executed and delivered in connection herewith do not constitute a novation or termination of the obligations and liabilities of any of the parties under the Original Credit Agreement as in effect prior to the date hereof, and (ii) such obligations and liabilities are in all respects continuing (as amended and restated hereby) with the terms of the Original Credit Agreement being modified only as provided in this Agreement. As of the date hereof, after giving effect to this Agreement, the Accommodations Outstanding of each Borrower are set forth on Schedule 7 attached hereto. In addition to the foregoing, the parties hereto acknowledge and agree that any existing LIBOR Rate Advances (as such term is defined in the Original Credit Agreement) that are outstanding on the date of this Agreement shall remain outstanding until the expiry of the interest period applicable thereto (and the provisions of the Original Credit Agreement applicable thereto shall apply *mutatis mutandis* as if incorporated herein) and thereafter shall (unless otherwise repaid) convert to an Advance bearing interest at Adjusted Term SOFR with an Interest Period selected by the applicable Borrower pursuant to an Interest Rate Election Notice to be provided by such Borrower hereunder, provided that if the applicable Borrower shall fail to deliver an Interest Rate Election Notice in accordance with the foregoing requirements such applicable LIBOR Rate Advances shall be automatically converted to a Base Rate (Canada) Advance on the expiry of the interest period applicable thereto.

### **Section 1.15. [intentionally deleted].**

### **Section 1.16. [intentionally deleted].**

### **Section 1.17. Quebec Matters.**

(1) For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property", (b) "real property" or "real estate" shall include "immovable property", (c) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutive clause, (d) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (e) an "agent" shall include a "mandatary", (f) "construction liens" shall include "legal hypothecs", (g) "joint and several" shall include "solidary", (h) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (i) "easement" shall include "servitude", and (j) "survey" shall include "certificate of location and plan". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présents confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

(2) For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any Loan Party, the Agent is hereby irrevocably authorized and appointed by each of the Secured Parties and, if applicable, on behalf of any of its Affiliates which is a Secured Party, to act as the holder of an irrevocable power of attorney (fondé de pouvoir) (within the meaning of Article 2692 of the Civil Code of Quebec) in order to hold any hypothec granted under the laws of the Province of Quebec as security for any debenture, bond or other title of indebtedness that may be issued by any such Loan Party pursuant to a deed of hypothec and to exercise such rights and duties as are conferred upon a fondé de pouvoir under the relevant deed of hypothec and applicable Laws (with the power to delegate any such rights or duties). Moreover, in respect of any pledge by any such Loan Party of any such debenture, bond or other title of indebtedness as security for any obligations arising under the Loan Documents, the Agent shall also be authorized to hold such debenture, bond or other title of indebtedness as agent and pledgee for its own account and for the benefit of all Lenders, Hedge Lenders and Service Lenders (collectively, the "Secured Parties"), the whole notwithstanding the provisions of Section 32 of the Act Respecting the Special Powers of Legal Persons (Quebec). The execution prior to the date hereof by the Agent in its capacity as fondé de pouvoir of any deed of hypothec or other security documents made pursuant to the laws of the Province of Quebec, is hereby ratified and confirmed. Any person who becomes a Lender or successor Agent shall be deemed to have consented to and ratified the foregoing appointment of the Agent as fondé de pouvoir, agent and mandatary on behalf of all Secured Parties, including such person and any Affiliate of such person designated above as a Secured Party. For greater certainty, the Agent, acting as the holder of an irrevocable power of attorney (fondé de pouvoir), shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Agent in this Agreement, which shall apply mutatis mutandis. In the event of the resignation and appointment of a successor Agent, such successor Agent shall also act as the holder of an irrevocable power of attorney (fondé de pouvoir).

#### **Section 1.18. Permitted Liens.**

Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

**Section 1.19. CDOR Discontinuation.**

(1) If the Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or the Majority Lenders notify the Agent that the Borrowers or Majority Lenders (as applicable) have determined that:

- (i) adequate and reasonable means do not exist for ascertaining CDOR, including because the **Refinitiv Benchmark Services Limited** CDOR page is not available or published on a current basis for the applicable period and such circumstances are unlikely to be temporary;
- (ii) the administrator of the CDOR or a Governmental Entity having jurisdiction has made a public statement identifying a specific date after which CDOR will permanently or indefinitely cease to be made available or permitted to be used for determining the interest rate of loans;
- (iii) a Governmental Entity having jurisdiction over the Agent has made a public statement identifying a specific date after which CDOR shall no longer be permitted to be used for determining the interest rate of loans (each such specific date in clause (ii) above and in this clause (iii) a “**CDOR Scheduled Unavailability Date**”); or
- (iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 1.19(1), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace CDOR,

then reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Borrowers may mutually agree upon a successor rate to CDOR, and the Agent and the Borrowers may amend this Agreement to replace CDOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar Canadian Dollars denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “**CDOR Successor Rate**”), together with any proposed CDOR Successor Rate conforming changes and any such amendment shall become effective at 5:00 p.m. (Toronto time) on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Majority Lenders have delivered to the Agent written notice that such Majority Lenders do not accept such amendment.

(2) If no CDOR Successor Rate has been determined and the circumstances under clause 1.19(1)(i) above exist or a CDOR Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Canadian Dollar BA Instruments shall be suspended (to the extent of the affected Canadian Dollar BA Instrument, or applicable periods). Upon receipt of such notice, the Canadian Borrower may revoke any pending request for an Advance of, conversion to or rollover of Canadian Dollar BA Instruments (to the extent of the affected Canadian Dollar BA Instrument, or applicable periods) or, failing that, will be deemed to have converted such request into a request for an Advance of Canadian Prime Rate Advances (subject to the foregoing clause (b)) in the amount specified therein.

(3) Notwithstanding anything else herein, any definition of the CDOR Successor Rate (exclusive of any margin) shall provide that in no event shall such CDOR Successor Rate be less than zero for the purposes of this Agreement. In addition, CDOR shall not be included or referenced in the definition of “Canadian Prime Rate.”

#### **Section 1.20. Interest Rates**

(1) The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(2) The interest rate on a Base Rate (Canada) Advance, Base Rate (United States) Advance and SOFR Loans may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 3.06 provides a mechanism for determining an alternative rate of interest. The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Base Rate (Canada), Base Rate (United States), Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, SOFR or similar interest rates, or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**ARTICLE 2**  
**CREDIT FACILITY**

**Section 2.01. Availability.**

(1) Each Lender individually, and not jointly and severally, agrees, on the terms and conditions of this Agreement, to make Accommodations in (i) Canadian Dollars and U.S. Dollars to the Canadian Borrower; and (ii) the U.S. Borrowers in U.S. Dollars, in a maximum aggregate amount equal to such Lender's Commitment. The Fronting Letter of Credit Lender agrees, in accordance with the terms and conditions of this Agreement, to make Letters of Credit available to the Borrowers up to the amount of the Fronting Letter of Credit Lender's Fronting Letter of Credit Commitment. The Swingline Lender agrees, on the terms and conditions of this Agreement, to make Swingline Advances to the Borrowers in a maximum amount equal to the Swingline Commitment. The failure of any Lender to make an Accommodation shall not relieve any other Lender of its obligation, if any, in connection with any Accommodation, but no Lender is responsible for any other Lender's failure in respect of such Accommodation. The Agent shall give each applicable Lender prompt notice of any Accommodation Notice received from a Borrower and of each applicable Lender's rateable portion of any Accommodation.

(2) Accommodations shall be made available by the Lenders to (i) the Canadian Borrower as BA Instruments, Canadian Prime Rate Advances SOFR Loans and Base Rate (Canada) Advances; and (ii) the U.S. Borrowers as SOFR Loans and Base Rate (United States) Advances. Accommodations by the Swingline Lender shall be made available as Swingline Advances pursuant to ARTICLE 3. Accommodations by the Fronting Letter of Credit Lender shall be made available as Letters of Credit pursuant to ARTICLE 5.

**Section 2.02. Commitments and Facility Limits.**

(1) The Accommodations Outstanding under the Credit Facility shall not at any time exceed the Commitment. The Accommodations Outstanding under the Credit Facility to each Lender shall not at any time exceed such Lender's Commitment. The sum of the principal amount of all Swingline Advances shall not at any time exceed the Swingline Commitment. The Face Amount of Letters of Credit outstanding at any time shall not exceed \$8,000,000.

(2) The Credit Facility shall revolve and no payment or prepayment or repayment under the Credit Facility shall reduce the Commitment thereunder unless expressly otherwise provided for herein.

(3) The Credit Facility shall be available in one or more Accommodations from and after the date of this Agreement and from time to time prior to the Maturity Date.

**Section 2.03. Use of Proceeds.**

The Borrower shall use the proceeds of Accommodations under the Credit Facility to finance (i) working capital requirements and for other general corporate purposes; (ii) Permitted Acquisitions; (iii) Capital Expenditures; and (iv) Share Repurchases.

**Section 2.04. Mandatory Repayments.**

(1) The Borrowers shall repay (subject as otherwise provided in this Agreement) the Accommodations Outstanding under the Credit Facility to the Agent on behalf of each Lender (and the Commitment shall be permanently cancelled) on the Maturity Date, together with all accrued interest and Fees and all other amounts payable to the Lenders in connection with the Credit Facility. On the Maturity Date, the Borrower shall deliver to the Fronting Letter of Credit Lender (or cause to be delivered to the Fronting Letter of Credit Lender) originals of each unexpired Letter of Credit issued by the Fronting Letter of Credit Lender or Cash Collateral or a letter of credit (on terms and conditions satisfactory to the Fronting Letter of Credit Lender) in lieu thereof.

**Section 2.05. Mandatory Prepayments.**

(1) An amount equal to the Net Proceeds from any Asset Sale by the Parent or any of its Subsidiaries in excess of \$12,500,000 (or the Equivalent Amount in any other currency) in any Financial Year (whether individually or in aggregate and taking into account any proceeds received in another currency at the Equivalent Amount at the time such proceeds are received) shall be applied to the repayment of Accommodations Outstanding under the Credit Facility (and the Commitment shall be permanently reduced by an amount by which the Net Proceed of such Disposition exceed \$12,500,000), except to the extent that the Net Proceeds from such Disposition of Assets are reinvested (other than in cash or Cash Equivalents) or used in the Business by the Parent and its Subsidiaries within 180 days of the date of such Asset Sale.

(2) An amount equal to the Net Proceeds from the issuance of any Equity Interests (other than the Net Proceeds of an Excluded Equity Issuances) by the Parent shall be applied forthwith upon receipt by or on behalf of the Parent or any of its Subsidiaries to the repayment of Accommodations Outstanding under the Credit Facility (and the Commitment shall be permanently reduced by the amount of such Net Proceeds). For the purposes hereof “**Net Proceeds of an Excluded Equity Issuances**” means the Net Proceed of an Equity Issuance which are used to fund a Permitted Acquisition or Capital Expenditures permitted hereunder.

(3) An amount equal to the Net Proceeds from the incurrence of any Funded Debt by Parent or any of its Subsidiaries, other than Funded Debt permitted by Section 9.02(1), shall be applied forthwith upon receipt by or on behalf of the Parent or any of its Subsidiaries to the repayment of Accommodations Outstanding under the Credit Facility (and the Commitment shall be permanently reduced by the amount of such Net Proceeds).

(4) An amount equal to the Net Proceeds of any insurance maintained by the Parent or any of its Subsidiaries (other than business interruption insurance) received by the Parent or any of its Subsidiaries in an amount in excess of \$1,000,000 on account of each separate loss, damage or injury shall be applied forthwith upon receipt thereof, to the repayment of Accommodations Outstanding under the Credit Facility (and the Commitment shall be permanently reduced by an amount by which the Net Proceed of such Disposition exceed \$1,000,000) except to the extent (y) such Net Proceeds shall have been expended by the Parent or its applicable Subsidiary for the repair or replacement of the affected property within 180 days of receipt of such Net Proceeds and the Parent shall have furnished to the Agent evidence satisfactory to the Agent of such expenditure, or (z) the Parent or one or more of its Subsidiaries has Committed to expend such Net Proceeds for the repair or replacement of the affected property within 180 days of receipt of such Net Proceeds and such Net Proceeds are actually used for the repair or replacement of the affected property within 365 days of the receipt thereof.

**Section 2.06. Optional Reductions of Commitments.**

(1) The Parent may, subject to the provisions of this Agreement and without penalty or bonus, prepay Accommodations Outstanding under the Credit Facility and/or reduce the Commitment, in each case, in whole or, subject to the next following sentence, in part, upon the number of Business Days' notice to the Agent specified in Schedule 5 by a notice (a "**Payment Reduction Notice**") substantially in the form of Schedule 11, which shall be irrevocable and binding on the Borrowers and which shall specify the proposed date and aggregate principal amount of the prepayment or reduction. In such case, the Borrowers shall pay to the applicable Lenders in accordance with such notice the amount of such prepayment or the amount by which the Accommodations Outstanding under the Credit Facility exceed the proposed reduced Commitment. Each partial prepayment or reduction shall be in a minimum aggregate principal amount of U.S.\$500,000 and an integral multiple of U.S.\$100,000. Notwithstanding the foregoing, the Parent may permanently reduce the Commitment of a Defaulting Lender in accordance with Section 2.13.

(2) Subject to the next following sentence, the Canadian Borrower may not, pursuant to this Section 2.06, prepay the amount of any Drawings, except on the maturity date for the relevant Drawing. The Canadian Borrower may, pursuant to this Section 2.06, prepay the amount of any Drawings by depositing with the Agent the Face Amount of such Drawings to be held by the Agent in a cash collateral account and invested in an interest bearing instrument and irrevocably authorizing and directing the Agent to apply such amount on the maturity date for the relevant Drawing to the repayment of the relevant BA Instrument. Interest on amounts held on deposit by the Agent for such deposits shall be paid to the Canadian Borrower on the maturity date for the relevant Drawing.

**Section 2.07. Payments under this Agreement.**

(1) Unless otherwise expressly provided in this Agreement, the Borrowers shall make any payment required to be made by it to the Agent by depositing the amount of the payment to the applicable Borrower's Account not later than 12:00 p.m. (Toronto time) on the date the payment is due. The Agent shall distribute to each applicable Lender promptly on the date of receipt by the Agent of any payment, an amount equal to the amount then due to each Lender.

(2) Unless otherwise expressly provided in this Agreement, the Agent shall make Accommodations and other payments to the applicable Borrower under this Agreement by crediting the applicable Borrower's Account (or causing the applicable Borrower's Account to be credited) with the amount of the payment in the relevant currency not later than 1:00 p.m. (Toronto time) on the date the payment is to be made.

(3) The Borrowers shall pay to the Agent on behalf of each applicable Lender on written demand any amounts required to compensate the Lenders for any actual loss suffered or incurred by it as a result of (i) the failure of the Borrowers to effect an Accommodation in the manner and at the time specified in any Accommodation Notice; (ii) any payment being made in respect of a BA Instrument other than on the applicable maturity thereof or a SOFR Loan other than on the date permitted hereunder in respect thereof; or (iii) the failure of the Borrowers to make a payment or a mandatory repayment in the manner and at the time specified in this Agreement. Written notice as to the amount of any such loss submitted in good faith by a Lender to the Borrowers shall be prima facie evidence of such amount.

**Section 2.08. Application of Payments and Prepayments.**

(1) Subject to Section 10.03, all amounts received by the Agent from or on behalf of the Borrower and not previously applied pursuant to this Agreement shall be applied by the Agent as follows (i) first, in reduction of the Borrowers' obligations to pay any unpaid expenses of the Agent; (ii) second, in reduction of the Borrowers' obligations to pay any unpaid interest and any Fees which are due and owing; (iii) third, in reduction of the Borrowers' obligations to pay any claims or losses referred to in Section 17.01; (iv) fourth, in reduction of the Borrowers' obligations to pay any amounts due and owing on account of any unpaid principal amount of Advances which are due and owing; (v) fifth, in reduction of the Borrowers' obligations to pay any other unpaid Accommodations Outstanding which are due and owing; (vi) sixth, in reduction of any other obligation of the Borrowers under this Agreement and the other Loan Documents; and (vii) seventh, to the Borrowers or such other Persons as may lawfully be entitled to or directed to receive the remainder.

**Section 2.09. Computations of Interest and Fees.**

(1) All computations of interest shall be made by the Agent taking into account the actual number of days occurring in the period for which such interest is payable, and (i) if based on the Canadian Prime Rate, the Base Rate (Canada) or the Base Rate (United States), on the basis of a year of 365 or 366 days, as the case may be; provided that, to the extent that clause (ii) of the definition of Base Rate (Canada) or the Base Rate (United States) contemplates that the Base Rate (Canada) or the Base Rate (United States), as applicable, shall be determined by reference to the Federal Funds Rate, any such determination shall be made on the basis of the actual number of days elapsed over a year of 360 days; and (ii) if based on Daily Simple SOFR or Term SOFR, on the basis of a year of 360 days.



(2) All computations of Fees shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, taking into account the actual number of days occurring in the period for which such fees are payable.

(3) For purposes of the *Interest Act* (Canada), whenever any interest or fee under this Agreement is calculated using a rate based on a number of days less than a full year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (z) divided by the number of days based on which such rate is calculated. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

#### **Section 2.10. Adjustment for Currency Fluctuations.**

If the Agent shall notify the Parent in writing not later than 4:00 p.m. (Toronto time) on an Exchange Rate Determination Date that solely by reason of fluctuations in currency valuation, the Accommodations Outstanding under the Credit Facility exceed 103% of the Commitment on the date immediately preceding such Exchange Rate Determination Date (the amount by which such Accommodations Outstanding exceed such Commitment on such date being the “**Excess**”), the Borrowers shall, within three (3) Business Days thereafter, make a payment by repaying Advances outstanding under the Credit Facility in an amount equal to the Excess or, (y) if the Borrowers do not have Advances outstanding under the Credit Facility in an amount equal to or greater than the Excess, make a payment by repaying all Advances in amounts less than the Excess (if any) under the Credit Facility and by depositing with the Agent an amount equal to the amount by which the Excess exceeds the amount of the Advances under the Credit Facility repaid to be held by the Agent in trust for the applicable Lenders and irrevocably authorizing and directing the Agent to apply such payment as a repayment of any reimbursement obligation in respect of any Drawings outstanding under the Credit Facility on the next applicable maturity date. Any interest on the amount deposited with the Agent shall be held in trust for the Borrowers and shall be paid to the Borrowers on the next Exchange Rate Determination Date.

#### **Section 2.11. Commitment Fees.**

(1) The Borrowers shall pay to the Agent, for the account of the Lenders, a fee calculated at a rate per annum equal to the Applicable Commitment Fee Rate calculated in respect of each Lender, on the unused and uncanceled portion of the Commitment of such Lender (without regard to any Swingline Advances which such Lender is contingently liable for pursuant to Section 3.01(3)), calculated daily and payable in arrears on the third Business Day of each calendar quarter in respect of the immediately preceding calendar quarter, and on the Maturity Date.

**Section 2.12. Defaulting Lender Adjustments.**

(1) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Law:

- (i) Waivers and Amendments. No Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender. No Defaulting Lender shall be included as a Lender for purposes of the calculation of "Majority Lenders".
- (ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees, indemnity payments or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ARTICLE 10 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 13.01 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to each Fronting Letter of Credit Lender hereunder; third, to Cash Collateralize each Fronting Letter of Credit Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 5.10; fourth, as the Parent may request (so long as no Default or Event of Default exists), to the funding of any Accommodation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; fifth, if so determined by the Agent and the Parent, 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 Accommodations under this Agreement and (y) Cash Collateralize each Fronting Letter of Credit Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 5.10; sixth, to the payment of any amounts owing to the Lenders or each Fronting Letter of Credit Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender or Fronting Letter of Credit Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Accommodations or Letter of Credit Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Accommodations were made or the related Letters of Credit were issued at a time when the conditions set forth herein were satisfied or waived, such payment shall be applied solely to pay the Accommodations made by, and Letter of Credit Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Accommodations made by, or Letter of Credit Obligations owed to, such Defaulting Lender until such time as all Accommodations and funded and unfunded participations in Letter of Credit Obligations are held by the Lenders pro rata in accordance with their applicable Commitments without giving effect to Section 2.12(1)(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 2.12(1)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

- (A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.11 and Section 5.06 for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided such Defaulting Lender shall be entitled to receive fees pursuant to Section 5.06 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its pro rata share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.10.
- (B) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrowers 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 Letter of Credit Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the applicable Fronting Letter of Credit Lender the amount of any such fee otherwise payable to such Defaulting Lender with respect to such Fronting Letter of Credit Lender's Fronting Exposure to such Defaulting Lender that has not been reallocated pursuant to clause (iv) below (except where the Borrowers shall have provided Cash Collateral for such Fronting Exposure pursuant to Section 5.10, in which case the Borrowers shall not be required to pay any fee relating to the amount of such Cash Collateral) and (z) not be required to pay the remaining amount of any such fee.

- (iv) Reallocation of Participations to Reduce Fronting Exposure. Upon written notice to the Parent, all or any part of such Defaulting Lender's participation in Letter of Credit Obligations shall be automatically reallocated among the Non-Defaulting Lenders in accordance with their respective pro rata share of the Commitment (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Accommodations Outstanding under the Credit Facility of any Non-Defaulting Lender to exceed the Commitment held by such Non-Defaulting Lender. 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 the Borrowers, the Agent or any Fronting Letter of Credit Lender as a result of such breach or a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.
- (v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under Law, Cash Collateralize each Fronting Letter of Credit Lender's Fronting Exposure, to the extent such re-allocation has not eliminated the Defaulting Lender's participation in Letter of Credit Obligations in accordance with the procedures set forth in Section 5.10.

(2) Defaulting Lender Cure. If the Parent, the Agent and each Fronting Letter of Credit Lender agree in writing that a Lender is no longer a Defaulting Lender, the 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 Accommodations Outstanding of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Accommodations Outstanding and funded and unfunded participations in Letters of Credit to be held pro rata by the applicable Lenders in accordance with the applicable Commitments (without giving effect to Section 2.12(1) (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 Borrowers 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 Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(3) New Letters of Credit. So long as any Lender which has a Commitment is a Defaulting Lender, no Fronting Letter of Credit Lender shall 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.

(4) Termination of Defaulting Lender Commitment. The Parent may terminate the unused amount of the Commitment of a Defaulting Lender upon not less than three (3) Business Days' prior notice to the Agent (who will promptly notify the Lenders thereof), provided that such termination will not be deemed to be a waiver or release of any claim the Borrowers, the Agent, any Fronting Letter of Credit Lender or any other Lender may have against such Defaulting Lender.

### Section 2.13. Replacement Lenders.

The Parent at its own cost and expense may designate an Eligible Assignee with the prior written consent of the Agent (and acceptable to each Fronting Letter of Credit Lender and the Swingline Lender), such consent not to be unreasonably withheld, conditioned or delayed (a “**Replacement Lender**”) to assume all or any part of the Commitments and the obligations of any Defaulting Lender hereunder, and to purchase the Accommodations Outstanding of such Defaulting Lender and such Defaulting Lender’s rights hereunder and with respect thereto, and within ten (10) Business Days of such designation the Defaulting Lender shall (x) sell to such Replacement Lender, without recourse upon, warranty by or expense to such Defaulting Lender, by way of an Assignment and Assumption for a purchase price equal to (unless such Defaulting Lender agrees to a lesser amount in writing) the outstanding principal amount of the Accommodations made by such Defaulting Lender, plus all interest accrued and unpaid thereon and all other amounts owing to such Defaulting Lender hereunder, and (y) assign to such Replacement Lender the Commitments of such Defaulting Lender. In the event any Defaulting Lender fails to execute the Assignment and Assumption in connection with an assignment pursuant to this Section, the Agent may, but only after such Defaulting Lender has been paid in full what it is entitled to be paid under this Section, upon two (2) Business Days’ prior notice to the Defaulting Lender, execute such agreement on behalf of the Defaulting Lender, and each Lender hereby grants to the Agent an irrevocable power of attorney (which shall be coupled with an interest) for such purpose. Upon such assumption and purchase by the Replacement Lender and subject to acceptance and recording of such Assignment and Assumption by the Agent pursuant to Section 18.01(3) hereof, such Replacement Lender shall be deemed to be a “Lender” for purposes of this Agreement and such Defaulting Lender shall cease to be a “Lender” for purposes of this Agreement and shall no longer have any obligations or rights hereunder (other than any obligations or rights which according to this Agreement shall survive the termination of the Commitments). Additionally, in the event a Defaulting Lender has been a Defaulting Lender for more than ninety (90) consecutive days, the Borrowers, at their own cost and expense, may repay in full all outstanding obligations under the Loan Documents (except for the Eligible Hedging Agreements and Other Secured Obligations) owed to such Defaulting Lender and terminate in full all of the Commitment held by such Defaulting Lender, and upon such repayment and termination such Defaulting Lender shall cease to be a “Lender” for purposes of this Agreement and shall no longer have any obligations or rights hereunder (other than any obligations or rights which according to this Agreement shall survive the termination of the Commitments).

### Section 2.14. Increase of Commitment.

(1) From time to time by notice in writing to the Agent, given at least 180 days prior to the Maturity Date, the Parent may request that the Commitment be increased, such increase to be in a minimum amount of \$10,000,000 for any one increase (and integrals of \$1,000,000), to a maximum aggregate increase in the Commitments taken as a whole of \$60,000,000 (each such increase of the Commitment being an “**Increased Commitment**”). Such notice shall specify the amount of the Increased Commitment requested at such time and the effective date thereof (which date shall not be earlier than 10 Business Days and not later than 30 days after the date of such notice (or such shorter or longer period as agreed to by the Agent and the Parent), the “**Effective Date**”). The Agent shall immediately advise the Lenders and offer each Lender an opportunity to provide its pro rata share portion of the Increased Commitment (in relation to a Lender’s pro rata share of the Commitment) in respect of such Lender and shall also offer any such Lender willing to provide such portion of the Increased Commitment (each a “**Consenting Lender**”) the opportunity to provide the amount of the Increased Commitment of each Lender that has not consented to provide its pro rata portion of the Increased Commitment (each a “**Non-Consenting Lender**” and the pro rata portion attributable to the Increased Commitment of each Non-Consenting Lender (each a “**Non-Consenting Lender’s Increased Commitment Amount**”).

(2) If the Consenting Lenders have not offered to acquire all of the Non-Consenting Lender's Increased Commitment Amount, then the Parent may arrange for one or more other financial institutions acceptable to the Agent, the Swingline Lender and the Fronting Letter of Credit Lender, acting reasonably (each, a "Substitute Lender"), to offer to provide the balance of such Non-Consenting Lender's Increased Commitment Amount and any such Substitute Lender that has agreed to provide an Increased Commitment shall sign an addendum to this Agreement, in form and substance satisfactory to the Agent, pursuant to which such Substitute Lender becomes a Lender under this Agreement and the parties thereto may specify the other term and conditions thereof (provided that the maturity date for any such Increased Commitment shall not be prior to the Maturity Date).

(3) The availability of any Increased Commitment is subject to the conditions precedent that (i) the representations and warranties contained in Section 8.01 (other than those made as of an earlier date only) are true and correct in all material respects as if they were made on the Effective Date; (ii) no Default or Event of Default has occurred and is continuing; (iii) with respect to any Substitute Lender, the consent of the Agent, the Swingline Lender and the Fronting Letter of Credit Lender, such consent not to be unreasonably withheld, conditioned or delayed; (iv) the financial covenants set forth in Section 9.03 would be satisfied on a *pro forma* basis as of the Effective Date; and (v) the Agent and each Lender shall have been reimbursed by Borrowers for all fees, costs and expenses incurred in connection with the request for, and implementation of, such Increased Commitment. The Increased Commitment shall be effective on the Effective Date.

### **ARTICLE 3 ADVANCES**

#### **Section 3.01. The Advances.**

(1) Each applicable Lender severally and not jointly agrees, in accordance with the terms and conditions of this Agreement and in accordance with the applicable Borrowing Notice, to make Advances to the Borrowers from time to time on any Business Day prior to the Maturity Date. The Swingline Lender agrees, in accordance with the terms and conditions of this Agreement, to make Swingline Advances (on a same day basis) to the Borrowers from time to time on any Business Day prior to the Maturity Date.

(2) Each Borrowing under the Credit Facility shall consist of Advances made to the applicable Borrower on the same day by the applicable Lenders in accordance with each applicable Lender's relevant rateable portion. Each requested Advance shall be in at least the minimum aggregate amount and in an integral multiple of the amount set forth in Schedule 5.

(3) The Swingline Lender may, in its sole discretion, give notice to the Agent who shall forthwith notify the Lenders that the principal amount of the Swingline Lender's outstanding Swingline Advances to the Borrowers shall be funded with a Borrowing or Borrowings under the Credit Facility (provided that such notice shall be deemed to have been given (y) on the Maturity Date if the Borrowers shall not have repaid all Swingline Advances on or prior to such day, and (z) upon the occurrence of an Event of Default, in which case Advances under the Credit Facility) (each such Borrowing, a "**Mandatory Borrowing**") shall be made on the next Business Day by all Lenders so that, immediately after the Mandatory Borrowing, each Lender shall share rateably in the Accommodations Outstanding under the Credit Facility and the proceeds of such Mandatory Borrowing shall be applied directly by the Agent to repay Advances outstanding to the Swingline Lender. Each Lender shall make Advances pursuant to a Mandatory Borrowing in the amount and in the manner specified in writing by the Agent notwithstanding (i) that the amount of the Mandatory Borrowing may not comply with the minimum amount for Borrowings otherwise required under this Agreement; (ii) that the conditions specified in ARTICLE 7 are not then satisfied; (iii) that a Default or an Event of Default has occurred and is continuing; (iv) the date of such Mandatory Borrowing; and (v) any reduction in the Commitment after any Swingline Advance was made by the Swingline Lender. In addition to the foregoing, the Borrower shall cause each Swingline Advance to be repaid in full on the last Business Day of each calendar week.

(4) In connection with the use or administration of Daily Simple SOFR, Term SOFR or SOFR, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR, Term SOFR or SOFR, as applicable.

### **Section 3.02. Procedure for Borrowing.**

(1) Except as provided in Section 3.02(2), each Borrowing shall be made on the number of days prior notice specified in Schedule 5, given not later than 11:00 a.m. (Toronto time) by the applicable Borrower to the Agent. Each notice of a Borrowing (a "**Borrowing Notice**") shall be in substantially the form of Schedule 1, shall be irrevocable and binding on the applicable Borrower and shall specify (i) the requested date of the Borrowing; (ii) the Type of Advance requested; (iii) the aggregate amount of the Borrowing; and (iv) in the case of a SOFR Loan, whether the Advance will bear interest at Daily Simple SOFR or Adjusted Term SOFR, and, the initial Interest Period. Upon receipt by the Agent of funds from the applicable Lenders and fulfilment of the applicable conditions set forth in ARTICLE 7, the Agent will make such funds available to the applicable Borrower in accordance with ARTICLE 2.

(2) Each Swingline Advance (i) may be made on the same day's telephone request (followed by notification via a Borrowing Notice) made on or before 11:00 a.m. (Toronto time) on such day and in such amount, as requested by the applicable Borrower to the Swingline Lender, providing the same information to the Swingline Lender as would be contained in a Borrowing Notice (which shall be deemed to have been so provided); or (ii) shall be made by the Swingline Lender, without notice from or to the Borrowers, in respect of any overdraft in any one or more of the accounts of the Borrowers with the Swingline Lender by deposit to such account of an amount equal to such overdraft. All payments of principal and interest with respect to a Swingline Advance shall be made by the Borrowers, as applicable, directly to the Swingline Lender, and the Swingline Lender is hereby irrevocably authorized and directed to debit any bank account maintained by the Borrowers with the Swingline Lender in order to effect such payment.

**Section 3.03. Conversions and Rollovers Regarding Advances.**

(1) Subject to the Types of Accommodation and Advances, the Borrowers may elect to (i) change any Advance outstanding, or any portion thereof, in each case, in the minimum aggregate amount referred to in Schedule 5 to another Type of Advance or convert an Advance outstanding to another Type of Accommodation in the case of an Advance other than SOFR Loan, as of any Business Day, and in the case of a SOFR Loan as of the last day of the Interest Period applicable thereto; provided that in the case of the change or conversion of an Advance denominated in one currency to an Advance denominated in another currency, the principal amount and interest thereon of such Advance to be changed or converted is paid in full on the date of such change or conversion; or (ii) continue any Advance other than an Advance bearing interest at the Term SOFR Reference Rate for a further Interest Period beginning on the last day of the then current Interest Period applicable to such Advance.

(2) Each election to change or convert an Advance into another Type of Advance or Type of Accommodation or to continue an Advance other than an Advance bearing interest at the Term SOFR Reference Rate for a further Interest Period, shall be made on the number of days prior notice specified in Schedule 5 given, in each case, not later than 11:00 a.m. (Toronto time) by the applicable Borrower to the Agent. Each such notice (an “**Interest Rate Election Notice**”) shall be given substantially in the form of Schedule 2 and shall be irrevocable and binding upon the applicable Borrower. If the applicable Borrower fails to deliver an Interest Rate Election Notice to the Agent for any Advance other than an Advance bearing interest at the Term SOFR Reference Rate or Daily Simple SOFR as provided in this Section 3.03(2), such Advance shall be converted (as of the last day of the applicable Interest Period) to and be outstanding as a Base Rate (Canada) Advance or Base Rate (United States) Advance, as applicable. No Borrower shall select an Interest Period which conflicts with the definition of Interest Period.



#### **Section 3.04. Circumstances Affecting SOFR Loans**

(1) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Advances whose interest is determined by reference to Daily Simple SOFR, Term SOFR or SOFR, or to determine or charge interest rates based upon Daily Simple SOFR, Term SOFR or SOFR, then, upon notice thereof by such Lender to the Borrower (through the Agent), (a) any obligation of such Lender to make or continue Advances bearing interest at Daily Simple SOFR, Term SOFR or SOFR or to convert Base Rate (Canada) Advances/Base Rate (United States) Advances to Advances bearing interest at Daily Simple SOFR, Term SOFR or SOFR shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate (Canada) Advances/Base Rate (United States) Advances the interest rate on which is determined by reference to Adjusted Term SOFR component of the Base Rate (Canada)/Base Rate (United States), the interest rate on which Base Rate (Canada) Advances/Base Rate (United States) Advances of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Adjusted Term SOFR component of the Base Rate (Canada)/Base Rate (United States), in each case until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all applicable SOFR Loans of such Lender to Base Rate (Canada) Advances/Base Rate (United States) Advances (the interest rate on which Base Rate (Canada) Advances/Base Rate (United States) Advances of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Adjusted Term SOFR component of the Base Rate (Canada)/Base Rate (United States) immediately, if such Lender may not lawfully continue to maintain such SOFR Loan and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Daily Simple SOFR, Term SOFR or SOFR, as applicable, the Agent shall during the period of such suspension compute the Base Rate (Canada)/Base Rate (United States) applicable to such Lender without reference to the Adjusted Term SOFR component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Daily Simple SOFR, Term SOFR or SOFR, as applicable. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to this Agreement.

(2) If any Change in Law (i) shall subject any Lender (or its lending office) to any tax, duty or other charge with respect to its SOFR Loans owed to it or its obligation to make SOFR Loans, or shall change the basis of taxation of payments to such Lender (or its lending office) of the principal of or interest on its SOFR Loans or any other amounts due under this Agreement or any other Loan Document in respect of its SOFR Loans or its obligation to make SOFR Loans (except for changes in the rate of tax on the overall net income of such Lender or its lending office imposed by the jurisdiction in which such Lender's principal executive office or lending office is located); or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including any such requirement imposed by the FRB) on such Lender (or its lending office) or shall impose on such Lender (or its lending office) or on the interbank market any other condition affecting its SOFR Loans or its obligation to make SOFR Loans; and the result of any of the foregoing is to increase the cost to such Lender (or its lending office) of making or maintaining any SOFR Loan, or to reduce the amount of any sum received or receivable by such Lender (or its lending office) under this Agreement or under any other Loan Document with respect thereto, by an amount deemed by such Lender to be material, then, upon notice thereof by such Lender to the Borrower any obligation of such Lender to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and the affected Interest Periods) until such Lender revokes such notice in addition to any other obligations hereunder. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for an Advance of or conversion to Base Rate (Canada) Advances in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate (Canada) Advances immediately. Upon any such conversion, the Borrower shall also pay any additional amounts required pursuant to this Agreement.

**Section 3.05. Interest on Advances.**

(1) The Borrowers shall pay interest on the unpaid principal amount of each Advance to it from the date of such Advance (or conversion of another Type of Advance into such Advance) until the date on which the principal amount of the Advance is repaid in full (or is converted into another Type of Advance or Type of Accommodation) at the following rates per annum:

(a) **Base Rate (Canada) Advances.** If and so long as such Advance is a Base Rate (Canada) Advance and subject as provided in the following sentence, at a rate per annum equal at all times to the Base Rate (Canada) in effect from time to time plus the Applicable Margin, calculated daily and payable in arrears (i) on the first Business Day of each month in each year; and (ii) on the day on which such Base Rate (Canada) Advance becomes due and payable in full pursuant to the provisions hereof. Any amount of principal of, or interest on, any such Base Rate (Canada) Advance which is not paid when due (whether at stated maturity, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to the Base Rate (Canada) in effect from time to time plus the Applicable Margin plus, to the extent permitted by law, 2%.

(b) **Base Rate (United States) Advances.** If and so long as such Advance is a Base Rate (United States) Advance and subject as provided in the following sentence, at a rate per annum equal at all times to the Base Rate (United States) in effect from time to time plus the Applicable Margin, calculated daily and payable in arrears (i) on the first Business Day of each month in each year; and (ii) on the day on which such Base Rate (United States) Advance becomes due and payable in full pursuant to the provisions hereof. Any amount of principal of, or interest on, any such Base Rate (United States) Advance which is not paid when due (whether at stated maturity, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to the Base Rate (United States) in effect from time to time plus the Applicable Margin plus, to the extent permitted by law, 2%.

(c) **Canadian Prime Rate Advances.** If and so long as such Advance is a Canadian Prime Rate Advance and subject as provided in the following sentence, at a rate per annum equal at all times to the Canadian Prime Rate in effect from time to time plus the Applicable Margin, calculated daily and payable in arrears (i) on the first Business Day of each month in each year; and (ii) on the day on which such Canadian Prime Rate Advance becomes due and payable in full pursuant to the provisions hereof. Any amount of principal of, or interest on, any such Canadian Prime Rate Advance which is not paid when due (whether at stated maturity, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to the Canadian Prime Rate in effect from time to time plus the Applicable Margin plus, to the extent permitted by law, 2%.

(d) **Adjusted Daily Simple SOFR Loans.** If and so long as such SOFR Loan bears interest at Adjusted Daily Simple SOFR and subject as provided in the following sentence, at a rate per annum equal at all times during any Interest Period for such SOFR Loan to Adjusted Daily Simple SOFR for such Interest Period plus the Applicable Margin, calculated daily and payable in arrears on (i) the applicable Interest Payment Date in respect thereof; and (ii) on the day on which such SOFR Loan becomes due and payable in full pursuant to the provisions hereof. Any amount of principal of or interest on any such SOFR Loan which is not paid when due (whether at stated maturity, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to the Base Rate (Canada) in effect from time to time plus the Applicable Margin plus, to the extent permitted by law, 2%.

(e) **Adjusted Term SOFR Loans.** If and so long as SOFR Loan bears interest at Adjusted Term SOFR and subject as provided in the following sentence, at a rate per annum equal at all times during any Interest Period for such SOFR Loan to Adjusted Term SOFR for such Interest Period plus the Applicable Margin, calculated daily and payable in arrears, on (i) the applicable Interest Payment Date in respect thereof; and (ii) on the day on which such SOFR Loan becomes due and payable in full pursuant to the provisions hereof. Any amount of principal of or interest on any such SOFR Loan which is not paid when due (whether at stated maturity, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to the Base Rate (Canada) in effect from time to time plus the Applicable Margin plus, to the extent permitted by law, 2%.

(f) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law ("**Maximum Lawful Rate**"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

### **Section 3.06      Effect of Benchmark Transition Event.**

(1) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Agent and the Borrowers may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all affected Lenders and the Borrowers so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Majority Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.06(1) will occur prior to the applicable Benchmark Transition Start Date.

(2) Each Eligible Hedging Agreement shall be deemed to be a “Loan Document” for purposes of this Section 3.06.

(3) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(4) The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.06(5). Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section.

(5) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks (the “IOSCO Principles”), then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the IOSCO Principles for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(6) Upon the Borrowers’ receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Loan or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate (Canada) Advance.

**ARTICLE 4**  
**BANKER'S ACCEPTANCES**

**Section 4.01. Acceptances and Drafts.**

(1) Each applicable Lender (other than the Swingline Lender) severally agrees, in accordance with the terms and conditions of this Agreement and in accordance with the applicable Drawing Notice, from time to time on any Business Day prior to the Maturity Date (i) in the case of a Lender which is willing and able to accept Drafts, to create acceptances ("**Banker's Acceptances**") by accepting Drafts and to purchase such Banker's Acceptances in accordance with Section 4.03(2); and (ii) in the case of a Lender which is unwilling or unable to accept Drafts, to purchase completed Drafts (which have not been and will not be accepted by the Lender or any other Lender) in accordance with Section 4.03(2), in each case, as requested by the Canadian Borrower in accordance with this ARTICLE 4.

(2) Each requested Drawing shall be in the minimum aggregate Face Amount and in an integral multiple of the amount set forth in Schedule 5 and shall consist of the creation and purchase of Banker's Acceptances or the purchase of Drafts on the same day, in each case for the applicable Drawing Price, by the relevant Lenders, in accordance with Section 4.03 and their respective applicable Commitment.

(3) The aggregate Face Amount of the Banker's Acceptances to be created and purchased by a Lender or Drafts to be purchased by a Lender on any Drawing Date (upon a conversion or otherwise), shall be determined by the Agent based upon each Lender's rateable portion of the Drawing, except that, if the Face Amount of any Banker's Acceptance to be created and purchased or Draft to be purchased, determined as aforesaid, would not be in an integral multiple of Cdn.\$100,000, the Agent in its sole discretion may increase such Face Amount to the nearest whole multiple of Cdn.\$100,000 or may reduce such Face Amount to the nearest whole multiple of Cdn.\$100,000.

**Section 4.02. Form of Drafts.**

Each Draft presented by the Canadian Borrower shall (i) be in an integral multiple of Cdn.\$100,000; (ii) be dated the date of the Drawing; and (iii) mature and be payable by the Canadian Borrower (in common with all other Drafts presented in connection with such Drawing) on a Business Day which occurs 1, 2 or 3, at the election of the Canadian Borrower, after the Drawing Date and on or prior to the Maturity Date. It is the intention of the parties that all Drafts accepted by the Lenders (other than a Lender which elects to accept Banker's Acceptances in the form of bills of exchange instead of depository bills) under this Agreement shall be issued in the form of a depository bill, be deposited with and be made payable to a "clearing house" (as defined in the Depository Bills and Notes Act (Canada)). The Agent and the Lenders shall effect the following practices and procedures and, subject to the approval of the Majority Lenders, establish and notify the Canadian Borrower and the Lenders of any additional procedures, consistent with the terms of this Agreement and the requirements of the Depository Bills and Notes Act (Canada), as are reasonably necessary to accomplish such intention: (i) each Draft accepted and purchased by a Lender hereunder shall have marked prominently and legibly on its face and within its text, at or before the time of issue, the words "This is a depository bill subject to the Depository Bills and Notes Act"; (ii) any reference to authentication of such Banker's Acceptance will be removed; and (iii) such Banker's Acceptance shall not be marked with any words prohibiting negotiation, transfer or assignment of it or of an interest in it.

#### **Section 4.03. Procedure for Drawing.**

(1) Each Drawing shall be made on notice (a “**Drawing Notice**”) given by the Canadian Borrower to the Agent not later than 11:00 a.m. (Toronto time) on the number of days’ notice specified in Schedule 5. Each Drawing Notice shall be in substantially the form of Schedule 3, shall be irrevocable, except as provided in Section 4.06(1), shall be binding on the Canadian Borrower and shall specify (i) the Drawing Date; (ii) the aggregate Face Amount of Drafts to be accepted, if applicable, and purchased; and (iii) the term thereof.

(2) Not later than 12:00 noon (Toronto time) on an applicable Drawing Date, each applicable Lender shall complete one or more Drafts in accordance with the Drawing Notice and either (i) accept the Drafts and purchase the Banker’s Acceptances so created for the Drawing Price; or (ii) purchase the Drafts for the Drawing Price. In each case, upon receipt by the Agent of funds from the applicable Lenders on account of the Drawing Price and upon fulfilment of the applicable conditions set forth in ARTICLE 7, the Agent shall make such funds available to the Canadian Borrower in accordance with ARTICLE 2.

(3) The Canadian Borrower shall, at the request of any Lender, issue one or more non-interest bearing, promissory notes (each a “**BA Equivalent Note**”) payable on the maturity date of any unaccepted Draft referred to above, in such form as such Lender may reasonably specify and in a principal amount equal to the Face Amount of, and in exchange for, any unaccepted Draft which such Lender has purchased in accordance with Section 4.03(2).

(4) Banker’s Acceptances, Drafts and BA Equivalent Notes purchased by a Lender may be held by it for its own account until the maturity date thereof or sold by it at any time prior to that date in any relevant Canadian market in such Lender’s sole discretion.

#### **Section 4.04. Presigned Draft Forms.**

(1) Subject to paragraph (2) of this Section 4.04, in order to enable the Lenders to create Banker’s Acceptances or complete Drafts in the manner specified in this ARTICLE 4, the Canadian Borrower shall supply each Lender or its agent with such number of Drafts as it may reasonably request, duly signed on behalf of the Canadian Borrower. Each Lender hereby agrees to indemnify the Canadian Borrower against any loss or improper use thereof by such Lender or its agents, will exercise and cause its agents to exercise such care in the custody and safekeeping of Drafts as it would exercise in the custody and safekeeping of similar property owned by it and will, upon request by the Canadian Borrower, promptly advise the Canadian Borrower of the number and designations, if any, of uncompleted Drafts held by it or its agents for the Canadian Borrower. The signature of any officer of the Canadian Borrower on a Draft may be mechanically reproduced and any BA Instrument bearing a facsimile signature shall be binding upon the Canadian Borrower as if it had been manually signed. Even if the individuals whose manual or facsimile signature appears on any BA Instrument no longer hold office at the date of its acceptance by the applicable Lender or at any time after such date, any BA Instrument so signed shall be valid and binding upon the Canadian Borrower. No Lender shall be liable for its failure to accept a Draft as required hereby if the cause of such failure is, in whole or in part, due to the failure of the Canadian Borrower to provide Drafts to such Lender on a timely basis.

(2) The Canadian Borrower hereby irrevocably appoints each Lender as its attorney to sign and endorse on its behalf, manually or by facsimile or mechanical signature, any BA Instrument necessary to enable each Lender to make Drawings in the manner specified in this ARTICLE 4. All BA Instruments signed or endorsed on the Canadian Borrower's behalf by a Lender shall be binding on the Canadian Borrower, all as if duly signed or endorsed by the Canadian Borrower. Each Lender shall (i) maintain a record with respect to any BA Instrument completed in accordance with this Section 4.04(1), voided by it for any reason, accepted and purchased or purchased or, in the case of a BA Equivalent Note, exchanged for another BA Instrument by it pursuant to this Section 4.04, and cancelled at its respective maturity; and (ii) retain such records in the manner and for the statutory periods provided by Laws which apply to such Lender and make such records available to the Canadian Borrower acting reasonably. On request by the Canadian Borrower, a Lender shall cancel and return to the possession of the Canadian Borrower all BA Instruments which have been pre-signed or pre-endorsed on behalf of the Canadian Borrower and which are held by such Lender and are not required to make Drawings in accordance with this ARTICLE 4.

**Section 4.05. Payment, Conversion or Renewal of BA Instruments.**

(1) Upon the maturity of a BA Instrument, the Canadian Borrower may (i) elect to issue a replacement Banker's Acceptance or Draft by giving a Drawing Notice in accordance with Section 4.03(1); (ii) elect to have all or a portion of the Face Amount of the BA Instrument converted to an Advance (provided that in the case of a conversion of a portion only of the Face Amount of the BA Instrument, the remaining Face Amount, if any, of such BA Instrument shall not be less than the minimum Face Amount set forth in Schedule 5) by giving a Borrowing Notice in accordance with Section 3.02(1); or (iii) pay, on or before 11:00 a.m. (Toronto time) on the maturity date for the BA Instrument, an amount in Canadian Dollars equal to the Face Amount of the BA Instrument (notwithstanding that a Lender may be the holder of it at maturity). Any such payment shall satisfy the Canadian Borrower's obligations under the BA Instrument to which it relates and the relevant Lender shall (y) then be solely responsible for the payment of the BA Instrument, and (z) thereafter indemnify the Canadian Borrower from any loss, cost or expense suffered by or imposed upon the Canadian Borrower in respect of any claim from a holder of such BA Instrument that the Canadian Borrower is liable for payment thereunder or any payment by the Canadian Borrower in connection with such claim.

(2) If the Canadian Borrower fails to pay any BA Instrument when due or request a replacement in the Face Amount of such BA Instrument pursuant to Section 4.05(1), the unpaid amount due and payable shall be converted to a Canadian Prime Rate Advance and shall bear interest calculated and payable as provided in ARTICLE 3. This conversion shall occur as of the maturity date of the BA Instrument and without any necessity for the Canadian Borrower to give a Borrowing Notice.

**Section 4.06. Circumstances Making Banker's Acceptances Unavailable.**

(1) If, by reason of circumstances affecting the money market generally, as determined by the Agent, there is no market for Bankers' Acceptances and Drafts, (i) the right of the Canadian Borrower to request a Drawing shall be suspended until the circumstances causing a suspension no longer exist; and (ii) any Drawing Notice which is outstanding shall be deemed to be a Borrowing Notice requesting a Canadian Prime Rate Advance unless it has been revoked by the Canadian Borrower before the specified Drawing Date.

(2) The Agent shall promptly notify the Canadian Borrower of the suspension of the Canadian Borrower's right to request a Drawing and of the termination of any such suspension.

**ARTICLE 5  
LETTERS OF CREDIT**

**Section 5.01. Letters of Credit.**

The Fronting Letter of Credit Lender agrees on the terms and conditions of this Agreement and in accordance with the applicable Issue Notice, to issue Letters of Credit for the account of the Borrowers on any Business Day prior to the Maturity Date.

**Section 5.02. Issue Notice.**

Each Issue shall be made on notice (an "**Issue Notice**") given by the applicable Borrower to the Fronting Letter of Credit Lender not later than 11:00 a.m. (Toronto time) on the number of days' notice specified in Schedule 5. The Issue Notice shall be in substantially the form of Schedule 4, shall be irrevocable and binding on the applicable Borrower and shall specify (i) the requested date of Issue (the "**Issue Date**"); (ii) the type and currency of such Letter of Credit; (iii) the Face Amount of the Letter of Credit; (iv) the expiration date of the Letter of Credit (which expiration date shall not (i) exceed 365 days from the Issue Date subject to such extensions thereof of not more than 365 days as may be notified by the applicable Borrower to the Fronting Letter of Credit Lender or (ii) extend beyond the Maturity Date, unless as of the applicable Issue Date or date of extension as to each Letter of Credit preceding the Maturity Date, such Letters of Credit are Cash Collateralized), and (v) the name and address of the Beneficiary.

**Section 5.03. Form of Letters of Credit.**

Each Letter of Credit shall (i) be dated the Issue Date; (ii) have an expiration date on the date specified in Section 5.02 or, if such date is not a Business Day on the Business Day immediately preceding such date; (iii) comply with the definition of Letter of Credit; (iv) be issued in Canadian Dollars, U.S. Dollars or any other currency agreed to by the Fronting Letter of Credit Lender; (v) be on the standard documentary forms required by the Fronting Letter of Credit Lender; and (vi) be subject to prior entry by the applicable Borrower into such master agreement, application and other standard forms required by the Fronting Letter of Credit Lender.



**Section 5.04. Procedure for Issuance of Letters of Credit.**

(1) Not later than 12:00 noon (Toronto time) on an applicable Issue Date, the Fronting Letter of Credit Lender will complete and issue an appropriate type of Letter of Credit (i) dated the Issue Date; (ii) in favour of the Beneficiary; (iii) in a Face Amount equal to the amount referred to in Section 5.02; and (iv) with the expiration date, as specified by the applicable Borrower in its Issue Notice (subject to Section 5.03).

(2) The aggregate undrawn Face Amount of all Letters of Credit shall not, at any time, exceed the lesser of (i) the Fronting Letter of Credit Lender's Fronting Letter of Credit Commitment, and (ii) the remaining Commitment of all of the Lenders, less the aggregate outstanding principal balance of the Accommodations Outstanding under the Credit Facility (including, for greater certainty, Swingline Advances).

(3) Unless otherwise agreed by the Fronting Letter of Credit Lender, no Letter of Credit shall require payment against a conforming draft to be made thereunder on the same Business Day upon which such draft is presented, if such presentation is made after 10:00 a.m. (local time) on such Business Day.

(4) Prior to the Issue Date, the applicable Borrower shall specify a precise description of the documents and the verbatim text of any certificates to be presented by the Beneficiary which, if presented by the Beneficiary, would require the Fronting Letter of Credit Lender to make payment under its applicable Letter of Credit. The Fronting Letter of Credit Lender may, before the issue of the Letter of Credit and in consultation with the applicable Borrower, require changes in any such documentation or certificate.

(5) In determining whether to pay under any Letter of Credit, the Fronting Letter of Credit Lender shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

**Section 5.05. Payment of Amounts Drawn Under Letters of Credit.**

(1) The Fronting Letter of Credit Lender shall notify the applicable Borrower with notice to the Agent on or before the date on which the Fronting Letter of Credit Lender intends to honour any drawing under a Letter of Credit.

(2) In respect of each Letter of Credit, unless,

(a) on the date of such drawing, the applicable Borrower has in response to a demand from the Fronting Letter of Credit Lender deposited, in the same day funds, to the applicable Borrower's Account an amount equal to the amount of such drawing,

then

(b) the applicable Borrower shall be deemed to have given a Borrowing Notice to the Agent, requesting a Canadian Prime Rate Advance, Base Rate (Canada) Advance or Base Rate (United States) Advance, as applicable, under the Credit Facility, and as determined by the Agent acting reasonably, based upon the amount required on the date on which such drawing is honoured in an amount equal to the amount of such drawing (and the obligations in respect of any Letter of Credit denominated in a currency other than Canadian Dollars or U.S. Dollars shall be converted to U.S. Dollars for purposes hereof based on the Equivalent Amount thereof in U.S. Dollars);

(c) the Lenders shall, on the date of such drawing, make such Canadian Prime Rate Advance, Base Rate (Canada) Advance or Base Rate (United States) Advance, as applicable, rateably under the Credit Facility, as applicable; and

(d) the Agent shall pay the proceeds thereof to the Fronting Letter of Credit Lender as reimbursement for the amount of such drawing. The Agent shall promptly notify the applicable Borrower of any such Canadian Prime Rate Advance, Base Rate (Canada) Advance or Base Rate (United States) Advance, as applicable.

(3) Each Lender, as applicable, shall be required to make its rateable portion of the Advances referred to in Section 5.05(2) notwithstanding, (i) the amount of the Borrowing may not comply with the minimum amount for Borrowings otherwise required under this Agreement; (ii) that the conditions specified in ARTICLE 7 are not then satisfied; (iii) that a Default or Event of Default has occurred and is continuing; (iv) the date of such Borrowing; (v) any reduction of the Commitment after any Letter of Credit was issued by the Fronting Letter of Credit Lender; or (vi) the Accommodations Outstanding under the Credit Facility after giving effect to such Advances would exceed the Commitment.

#### **Section 5.06. Fees.**

(1) The applicable Borrower shall pay to the Agent, for the account of the Lenders, as applicable, a Letter of Credit fee with respect to each outstanding Letter of Credit issued by the Fronting Letter of Credit Lender at a rate per annum equal to the Applicable Margin, calculated on the basis of the undrawn Face Amount of each such Letter of Credit, and a year of 365 or 366 days, calculated daily and payable in arrears on the third Business Day of each Financial Quarter in respect of the immediately preceding Financial Quarter, and on the Maturity Date in respect of the Credit Facility (the foregoing fees to be payable (x) in Canadian Dollars, with respect to Letters of Credit denominated in Canadian Dollars, (y) in U.S. Dollars, with respect to Letters of Credit denominated in U.S. Dollars), and (z) in the applicable currency of any Letter of Credit denominated in a currency other than Canadian Dollars or U.S. Dollars.

(2) The applicable Borrower shall pay to the Fronting Letter of Credit Lender, a fee equal to 25 basis points per annum, calculated on the basis of the undrawn Face Amount of each outstanding Letter of Credit issued by the Fronting Letter of Credit Lender and a year of 365 or 366 days, calculated daily and payable in arrears on the third Business Day of each Financial Quarter in respect of the immediately preceding Financial Quarter, and on the Maturity Date (the foregoing fees to be payable (x) in Canadian Dollars, with respect to Letters of Credit denominated in Canadian Dollars, (y) in U.S. Dollars, with respect to Letters of Credit denominated in U.S. Dollars), and (z) in the applicable currency of any Letter of Credit denominated in a currency other than Canadian Dollars or U.S. Dollars.

(3) The applicable Borrower shall pay to the Fronting Letter of Credit Lender its (i) set-up fees, cable charges and other customary miscellaneous charges in respect of the issue of Letters of Credit by it; and (ii) documentary and administrative charges for amending, transferring or drawing under, as the case may be, Letters of Credit of a similar amount, term and risks upon the amendment or transfer of each Letter of Credit and each drawing made thereunder (the foregoing fees to be payable (x) in Canadian Dollars, with respect to Letters of Credit denominated in Canadian Dollars, (y) in U.S. Dollars, with respect to Letters of Credit denominated in U.S. Dollars), and (z) in the applicable currency of any Letter of Credit denominated in a currency other than Canadian Dollars or U.S. Dollars.

**Section 5.07. Obligations Absolute.**

Subject to Section 5.04(5), the obligation of the applicable Borrower to reimburse the Fronting Letter of Credit Lender for drawings made under the Letters of Credit issued by it shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including:

- (1) any lack of validity or enforceability of any Letter of Credit;
- (2) the existence of any claim, compensation, set-off, defence or other right which the applicable Borrower may have at any time against a Beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Fronting Letter of Credit Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein and therein or any unrelated transaction (including any underlying transaction between the Parent or one of its Subsidiaries and the Beneficiary of any Letter of Credit);
- (3) any draft, demand, certificate or any other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
- (4) any other circumstances or happenings whatsoever, which are similar to any of the foregoing; or
- (5) that a Default or an Event of Default shall have occurred and be continuing.

**Section 5.08. Indemnification; Nature of Fronting Letter of Credit Lender's Duties.**

(1) In addition to amounts payable as elsewhere provided in this ARTICLE 5, the applicable Borrower hereby agrees to protect, indemnify, pay and save the Fronting Letter of Credit Lender harmless from and against any and all claims or losses (including reasonable legal fees and expenses) which the Fronting Letter of Credit Lender may incur or be subject to as a consequence, direct or indirect, of (i) the application for or issuance of or drawing under any Letter of Credit, other than as a result of the gross negligence or wilful misconduct of the Fronting Letter of Credit Lender as determined by a court of competent jurisdiction, provided that the Fronting Letter of Credit Lender acts in good faith; or (ii) the failure of the Fronting Letter of Credit Lender to honour a drawing under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future Governmental Entity prohibiting the payment of such drawing (all such acts or omissions herein called "**Government Acts**").

(2) As between the applicable Borrower and the Fronting Letter of Credit Lender, the applicable Borrower assumes all risks of the acts and omissions of, or misuse of any Letter of Credit issued by the Fronting Letter of Credit Lender, by the Beneficiary of such Letter of Credit. Except to ensure compliance with the applicable Letter of Credit, the Fronting Letter of Credit Lender shall not have any responsibility for (i) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for, issuance of or drawing under any Letter of Credit (even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged); (ii) the validity or sufficiency of any instrument transferring or assigning (or purporting to transfer or assign) any 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; (iii) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise (whether or not they are in cipher); (iv) errors in interpretation of technical terms; (v) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (vi) the misapplication by the Beneficiary of any Letter of Credit or of the proceeds of any drawing under such Letter of Credit; and (vii) any consequences arising from causes beyond the control of the Fronting Letter of Credit Lender including any Government Acts. None of the above shall affect, impair, or prevent the vesting of any of the Fronting Letter of Credit Lender's powers hereunder. Any action taken or omitted by the Fronting Letter of Credit Lender under or in connection with any Letter of Credit issued by it or the related certificates if taken or omitted in good faith, shall not put the Fronting Letter of Credit Lender under any resulting liability to the applicable Borrower provided that the Fronting Letter of Credit Lender acts without intentional or gross fault and has not engaged in wilful misconduct.

(3) The applicable Borrower shall have no obligation to indemnify the Fronting Letter of Credit Lender in respect of any liability incurred by the Fronting Letter of Credit Lender to the extent determined by a final non-appealable judgment of a court of competent jurisdiction to have been caused by the gross negligence or wilful misconduct of the Fronting Letter of Credit Lender, or out of the wrongful dishonour by the Fronting Letter of Credit Lender of a proper demand for payment made under any Letter of Credit issued by it.

#### **Section 5.09. Repayments.**

(1) If the applicable Borrower shall be required to repay the Accommodations Outstanding under the Credit Facility pursuant to ARTICLE 2 or ARTICLE 10, then the applicable Borrower shall pay to the Fronting Letter of Credit Lender, to the extent required pursuant thereto and in the amount provided therein, an amount equal to the Fronting Letter of Credit Lender's contingent liability in respect of any Letter of Credit outstanding hereunder, including any Letter of Credit which is the subject matter of any order, judgment, injunction or other such determination (a "**Judicial Order**") restricting payment by the Fronting Letter of Credit Lender under and in accordance with such Letter of Credit beyond the expiration date stated therein other than any Judicial Order permanently enjoining the Fronting Letter of Credit Lender from paying under such Letter of Credit. Payment in respect of each such Letter of Credit shall be due in the currency in which such Letter of Credit is denominated.

(2) The Fronting Letter of Credit Lender shall, with respect to any Letter of Credit issued by it, upon the date on which any final and non-appealable order, judgment or other such determination has been rendered or issued either terminating the applicable Judicial Order or permanently enjoining the Fronting Letter of Credit Lender from paying under such Letter of Credit, pay to the applicable Borrower an amount equal to the aggregate of (y) the difference between the amount paid to the Fronting Letter of Credit Lender pursuant to Section 5.09(1) and the amounts paid by the Fronting Letter of Credit Lender under such Letter of Credit, and (z) interest on such amount, if any, determined at the Fronting Letter of Credit Lender's applicable wholesale deposit rate for the relevant currency.

(3) The Fronting Letter of Credit Lender shall, with respect to any Letter of Credit issued by it, upon the earlier of (i) the date on which either (x) the original counterpart of such Letter of Credit is returned to the Fronting Letter of Credit Lender for cancellation, or (y) the Fronting Letter of Credit Lender is released by the Beneficiary from any further obligations in respect thereof; and (ii) the expiry (to the extent permitted by Law) of such Letter of Credit, pay to the Borrower an amount equal to the aggregate of (y) the difference between the amount paid to the Fronting Letter of Credit Lender pursuant to Section 5.09(1) and the amounts paid by the Fronting Letter of Credit Lender under such Letter of Credit, and (z) interest on such amount, if any, determined at the Fronting Letter of Credit Lender's applicable wholesale deposit rate for the relevant currency.

#### **Section 5.10. Cash Collateral.**

(1) **Fronting Exposure.** At any time that there shall exist a Defaulting Lender, within three (3) Business Days following the receipt by the applicable Borrower of written request of the Agent or any Fronting Letter of Credit Lender (with a copy to the Agent) the applicable Borrower shall Cash Collateralize such Fronting Letter of Credit Lender's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.12(1)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(2) The applicable Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, shall grant to the Agent, for the benefit of the applicable Fronting Letter of Credit Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of the applicable Borrower's Letter of Credit Obligations, to be applied pursuant to clause (3) below. If at any time the Agent reasonably determines that Cash Collateral is subject to any right or claim of any Person other than the Agent and the applicable Fronting Letter of Credit Lender as herein provided, or that the total amount of such Cash Collateral is less than the applicable Minimum Collateral Amount, the applicable Borrower will, promptly upon demand by the Agent, pay or provide to the Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(3) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 5.10 or Section 2.12 in respect of Letters of Credit shall be applied to satisfy the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(4) Cash Collateral (or the appropriate portion thereof) provided to reduce any Fronting Letter of Credit Lender's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 5.10 (and shall be returned to the applicable Borrower within three (3) Business Days) following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender whether by a cure of such status in accordance with Section 2.12(2) or by removal of such Lender pursuant to Section 2.13), or (ii) the determination by the Agent and the applicable Fronting Letter of Credit Lender that there exists excess Cash Collateral; provided that the Person providing Cash Collateral and the applicable Fronting Letter of Credit Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by the applicable Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

## **ARTICLE 6 SECURITY/GUARANTEES**

### **Section 6.01. Security.**

The Borrowers have provided or caused to be provided, as the case may be, to the Agent, for and on behalf of the Secured Parties as continuing collateral security for the present and future indebtedness and liability of the Borrowers and other Loan Parties to the Secured Parties hereunder and under the other Loan Documents, in each case, to the extent specified in the applicable documents relating to such security, the following security in form and substance satisfactory to the Agent acting reasonably, together with any relevant power of attorney, registrations, filings and other supporting documentation and opinions of counsel as requested by the Agent or its counsel (acting reasonably) (together with the security required pursuant to this Agreement or otherwise delivered in connection with this Agreement or the other Loan Documents from time to time, the "**Security**"):

- (i) a full recourse guarantee from the Parent, each of the Borrowers and each other Subsidiary that becomes a Guarantor hereunder;
- (ii) a general pledge and security agreement (or local law equivalent, including moveable hypothec to the extent the Parent or any of its Subsidiaries has any tangible Assets or is domiciled in the Province of Quebec) constituting a first-ranking charge on all personal property and assets of the Loan Parties (including a pledge in respect of all Equity Interests held by a Loan Party in the capital of any Subsidiary thereof, in each case, together with all certificates (if any) evidencing such ownership and stock transfer powers in respect of same), subject, if and to the extent applicable, to any Permitted Lien, the exceptions specified therein and other customary exceptions (each such agreement, a "**Pledge and Security Agreement**");

- (iii) in respect of any Intellectual Property registered with, or with respect to which an application (other than any United States trademark applications constituting Excluded Assets) for registration is pending with, the United States Patent and Trademark Office or the United States Copyright Office, a customary intellectual property security agreement in respect thereof governed by the laws of New York;
- (iv) appropriate evidence showing loss payable and additional insured clauses or endorsements with respect to the applicable property and third party liability insurance policies of the Parent and its Subsidiaries in favour of the Agent; and
- (v) other security consistent with the foregoing which may be required in any applicable jurisdiction to effect the registration and perfection of any of the foregoing.

**Section 6.02. Additional Guarantors.**

The Parent shall ensure that the Adjusted EBITDA of the Loan Parties at all times represent at least 85% of the consolidated Adjusted EBITDA of the Parent (in each case for the last four Financial Quarters in respect of which the Agent and the Lenders have received a Compliance Certificate hereunder) and shall cause such additional Subsidiaries of the Parent to become Guarantors hereunder and provide the other Security required herein as may be necessary to comply with the foregoing requirements; provided that no Subsidiary of Parent which is not a Guarantor shall own, or hold exclusive rights in, any Material IP.

**Section 6.03. Mortgaged Property.**

The Parent shall, or shall cause its applicable Subsidiary to, provide and maintain with the Agent, for and on behalf of the Secured Parties no later than 90 days after the Closing Date or promptly upon the acquisition thereof, as applicable, a registered first priority debenture/hypothec (subject to Permitted Liens) in respect of any Material Owned Real Property owned on the Closing Date or acquired thereafter (the owned real/immoveable property so subject to such debentures/hypothecs at any time is herein referred to as the “**Mortgaged Property**”), together with an opinion of Borrowers’ counsel with respect thereto, an ALTA lender’s title insurance policy insuring such debenture/hypothec, a current ALTA survey, certified to Agent by a licensed surveyor, a certificate from a national certification agency indicating whether such Mortgaged Property is located in a special flood hazard area, an environmental audit and any other item reasonably necessary in order to obtain any of the foregoing in form and substance reasonably acceptable to Agent.

#### **Section 6.04. Obligations Secured by the Security.**

(1) The documents constituting the Security shall secure the present and future indebtedness, obligations and other liabilities of each of the applicable Loan Parties specified therein to the Secured Parties under the Loan Documents to which such Loan Party is a party, other than Excluded Swap Obligations (the “**Secured Obligations**”) and all such Secured Obligations shall rank *pari passu* with each other and any proceeds from any realization of the Collateral shall be applied to the Secured Obligations rateably in accordance with Section 10.03 (whether such Collateral is in the name of the Agent or in the name of any one or more of the Lenders, the Service Lenders or Hedge Lenders and without regard to any priority to which any Lender, the Service Lenders or Hedge Lender may otherwise be entitled under applicable law). Notwithstanding the rights of the Hedge Lenders and the Service Lenders to benefit from the Security, all decisions concerning the Security and the enforcement thereof shall be made by the Lenders or the Majority Lenders in accordance with this Agreement and the other Loan Documents. No Hedge Lender or Service Lender shall have any additional right to influence the Security or the enforcement thereof as long as this Agreement remains in force.

(2) The Eligible Hedging Agreements shall not cease to be secured except in accordance with the terms of such agreements or with the prior written consent of the applicable Hedge Lender. If the Accommodations Outstanding have been indefeasibly paid and performed in full in cash and this Agreement and the Commitments have been terminated, the Hedge Lenders and the Service Lenders will release their interest in the Security upon receiving collateral to secure the present or future obligations under their respective Eligible Hedging Agreement or Other Secured Agreements, as applicable, in an amount and on terms satisfactory to such Hedge Lenders or Services Lenders, acting reasonably (or as otherwise provided in the applicable Eligible Hedging Agreement or Other Secured Agreement) and such Secured Obligations shall continue to rank *pari passu* with each other and such collateral shall be applied rateably to such Secured Obligations (and decisions concerning the Security shall be made by the Hedge Lenders and the Service Lenders as they may determine among themselves). The provisions of this Section 6.04(2) shall survive the termination of this Agreement and the repayment of the Accommodations Outstanding.

#### **Section 6.05. Further Assurances.**

The Parent on behalf of itself and each of the other Loan Parties agrees that it will from time to time at its expense duly authorize, execute and deliver or cause to be duly authorized, executed and delivered to the Agent such further instruments and documents and take such further action within its control as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits granted or intended to be granted to the Agent by the Loan Documents (other than Eligible Hedging Agreements or Other Secured Agreements) and of the rights and remedies therein granted to the Agent, including the filing of financing statements or other documents under any applicable Law with respect to the Liens created thereby. The Parent on behalf of itself and each of the other Loan Parties acknowledges that the Loan Documents have been prepared on the basis of applicable Law and the corporate structure and capitalization of the Parent and its Subsidiaries in effect on the date thereof, and that changes to applicable Law or the corporate structure and capitalization of the Parent and its Subsidiaries may require the execution and delivery of different forms of documentation, and accordingly the Agent shall have the right (acting reasonably) to require that the Loan Documents (other than Eligible Hedging Agreements or Other Secured Agreements) be amended, supplemented or replaced (and the Parent shall duly authorize, execute and deliver (or cause to be authorized, executed and delivered) to the Agent any such amendment, supplement or replacement reasonably requested by the Agent with respect to any of the Loan Documents (other than Eligible Hedging Agreements or Other Secured Agreements)) within 5 Business Days of presentation of reasonable drafts thereof (i) to reflect any change in applicable Law or the corporate structure and capitalization of the Parent and its Subsidiaries; (ii) to facilitate the creation and registration of appropriate forms of security in applicable jurisdictions; or (iii) to confer upon the Agent Liens similar to the Liens created or intended to be created by the Loan Documents.



## Section 6.06. Security Principles

Notwithstanding anything to the contrary, the Collateral shall exclude the following: (i) (A) any owned and leased real/immoveable property other than Material Owned Real Property; (ii) any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such licenses, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction, but excluding any prohibition or restriction that is ineffective under the PPSA or the UCC (or similar regulation in any applicable jurisdiction)), (iii) pledges and security interests prohibited by applicable Law (including any legally effective requirement to obtain the consent of any Governmental Entity), (iv) Margin Stock and, to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto under (other than the Loan Parties or any of their Affiliates), the terms of any applicable organizational documents, joint venture agreement or shareholders' agreement, equity interests in any Person other than Wholly-Owned Subsidiaries, (v) Assets to the extent a security interest in such Assets would result in material adverse tax consequences as reasonably determined by the Parent in consultation with the Agent, (vi) any intent-to-use United States trademark application for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office, but solely to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law, (vii) any lease, license or other agreement in respect of personal property (including pursuant to a purchase money security interest or similar arrangement) and the property subject to such lease, license or agreement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement (or purchase money arrangement) or create a right of termination in favor of any other party thereto (other than the Parent or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the PPSA or the UCC (or similar regulation in any applicable jurisdiction) or other similar applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the PPSA or the UCC (or similar regulation in any applicable jurisdiction) or other similar applicable Law notwithstanding such prohibition, and (viii) other assets agreed to by the Majority Lenders in writing. The Collateral may also exclude those Assets as to which the Agent and the Parent reasonably agree in writing that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Secured Parties of the security to be afforded thereby (the foregoing described in the previous two sentences are collectively referred to as the "Excluded Assets").

In addition, (a) no control agreements or other perfection actions shall be required with respect to any securities accounts or commodities accounts covered by Section 9.01(17), (b) no perfection actions shall be required with respect to letter of credit rights, except to the extent constituting a supporting obligation for other Collateral as to which perfection is accomplished solely by the filing of a PPSA or UCC financing statement (or similar filing in any applicable jurisdiction) (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a PPSA or UCC financing statement (or similar filing in any applicable jurisdiction)), and (c) no perfection actions shall be required with respect to motor vehicles and other assets subject to certificates of title with a value not in excess of \$100,000 each and commercial tort claims with a value not in excess of \$500,000 each other than the filing of a PPSA or UCC financing statement (or similar filing in any applicable jurisdiction).

**ARTICLE 7**  
**CONDITIONS OF LENDING**

**Section 7.01. Conditions Precedent to Effectiveness.**

The effectiveness of this Agreement is subject to the following conditions precedent being satisfied on or prior to the date of this Agreement:

- (1) execution and delivery of this Agreement by the Borrowers, the Agent and each of the Lenders;
- (2) the Agent shall have received a copy (certified by an authorized officer of the applicable Borrower) of (i) the charter documents and by-laws (or equivalent) of each Borrower; (ii) the resolutions of the board of directors (or equivalent governing body) of each Borrower approving the borrowing and other matters contemplated by this Agreement; and (iii) all other instruments evidencing necessary corporate or other action of each Borrower with respect to such matters;
- (3) the Agent shall have received a certificate of the secretary or an assistant secretary, director, member or other officer of each Borrower certifying the names and true signatures of its officers authorized to sign this Agreement;
- (4) the Agent shall have received a certificate of status, compliance, good standing or like certificate, if applicable, with respect to each Borrower issued by the appropriate Governmental Entity in the jurisdiction of its incorporation or formation;
- (5) the Agent shall have received favourable opinions of counsel to the Borrowers in the jurisdiction of incorporation of such entity (if applicable) and each other relevant jurisdiction covering such matters relating to the Borrowers as the Agent shall reasonably request;
- (6) receipt by the Agent and the Lenders of a Compliance Certificate calculating the financial covenants specified in Section 9.03 herein on a *pro forma* basis and evidencing compliance by the Parent therewith (using Adjusted EBITDA and Interest Expense for last twelve months ending March 31, 2022, excluding Ting Fiber, LLC and including Funded Debt as of the date hereof);
- (7) without limiting Section 7.02, the Agent shall have received a certificate of an officer of the Parent certifying (i) that all of the representations and warranties, except where made only as of an earlier date, of the Parent herein are true and correct on and as of the date of this Agreement Date; and (ii) that no Default or Event of Default has occurred and is continuing;

(8) all reasonable and documented out-of-pocket fees and expenses (including the reasonable legal fees and disbursements of Blake, Cassels & Graydon LLP and Katten Muchin Rosenman LLP) payable under or in connection with this Agreement shall have been paid in full;

(9) payment to the Agent (for the account of each Lender) of an upfront fee in respect of the extension of the Maturity Date provided herein in an amount equal fee equal to 8 bps of each Lender's Commitment hereunder;

(10) the Agent and the Lenders shall have received such documents as they may reasonably request at least seven (7) Business Days prior to the date hereof in connection with applicable AML Legislation (including the Patriot Act) (provided that execution by the Agent and the Lenders of this Agreement shall be evidence of such receipt and satisfaction therewith);

(11) the Agent and the Lenders shall have received and be satisfied with a true and complete copy of the Management Services Agreement; and

(12) arrangements satisfactory to the Agent and the Lenders for the prior or substantially concurrent completion of the 2022 Reorganization and the related equity investment in Ting Fiber, LLC by Generate Capital and its related affiliates (other than the funding of such equity investment which shall be completed in accordance with the Post-Closing Undertaking).

**Section 7.02. Conditions Precedent to All Accommodations and Conversions.**

(1) The obligation of each Lender to make Accommodations or otherwise give effect to any Accommodation Notice hereunder shall be subject to the conditions precedent that on the date of such Accommodation Notice and Accommodation, and immediately after giving effect thereto and to the application of any proceeds therefrom:

(a) all of the representations and warranties of the Parent herein are true and correct in all material respects on and as of such date as though made on and as of such date (except where made only as of an earlier date or as disclosed to and accepted by the Majority Lenders prior to such date);

(b) no event or condition shall have occurred and be continuing, or result from such Accommodation or giving effect to such Accommodation Notice, which constitutes a Default or an Event of Default; and

(c) the making of such Accommodation hereunder will not violate any applicable Law then in effect.

(2) Each of the giving of any Accommodation Notice by a Borrower and the acceptance by a Borrower of any Accommodation shall be deemed to constitute a representation and warranty by the Parent that, on the date of such Accommodation Notice or Accommodation, as the case may be, and after giving effect thereto and to the application of any proceeds therefrom, the statements set forth in Section 7.02(1) are true and correct (except as disclosed to and accepted by the Majority Lenders prior to such date).

**Section 7.03. No Waiver.**

The making of an Accommodation or otherwise giving effect to any Accommodation Notice hereunder, without the fulfilment of one or more conditions set forth in Section 7.01 or Section 7.02, as applicable, shall not constitute a waiver of any such condition with respect to any subsequent Accommodation Notice or Accommodation, and the Lenders reserve the right to require fulfilment of such condition in connection with any subsequent Accommodation Notice or Accommodation.

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES**

**Section 8.01. Representations and Warranties.**

The Parent represents and warrants to the Agent and the Lenders, acknowledging and confirming that the Agent and each Lender is relying thereon without independent inquiry in entering into this Agreement and providing Accommodations hereunder, that:

(1) **Existence and Standing.** The Parent and each of its Subsidiaries is a corporation, company, partnership or other entity, as the case may be, incorporated or organized and subsisting under the laws of its jurisdiction of incorporation or organization and has all requisite corporate or other constitutional power and authority to own, hold under licence or lease its property, undertaking and Assets and to carry on (i) its business; and (ii) the transactions contemplated by this Agreement and each other Loan Document to which it is a party.

(2) **Corporate Power.** The Parent and each Loan Party has all requisite corporate, partnership or other constitutional power and authority to enter into and perform its obligations under this Agreement and each other Loan Document to which it is a party, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder or thereunder to be done, observed or performed by it in accordance with the terms hereof and thereof.

(3) **Conflict with Other Instruments.** The execution and delivery by the Parent and each Loan Party and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Agreement and each other Loan Document to which it is a party will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its articles, memoranda or articles of association, by-laws, partnership agreement, shareholders' agreement or other organizational documents applicable to it, as the case may be; (ii) any applicable Law; (iii) any Material Contract, Material Authorization or any material contractual restriction (including, for the avoidance of doubt, any indenture, mortgage or charge) binding on or affecting it or its Assets; or (iv) any material judgment, injunction, determination or award which is binding on it, in each such case except to the extent that such breach would not reasonably be expected to result in a Material Adverse Change.

(4) **Corporate Action, Governmental Approvals, etc.** The execution and delivery by the Parent and each Loan Party of this Agreement and each of the Loan Documents to which it is a party, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate, company, partnership or other action including, without limitation, the obtaining of all necessary shareholder, partnership or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person, is or was necessary in connection with the execution and delivery of and performance by the Parent or any of its Subsidiaries of its obligations under this Agreement and the other Loan Documents to which it is a party, except such as are in full force and effect, unamended at the date hereof or where failure to obtain same would not reasonably be expected to have a Material Adverse Change.

(5) **Due Execution; Validity and Enforceability; Defaults.** This Agreement and each other Loan Document to which the Parent or any Loan Party is a party has been duly executed and delivered, as the case may be, by the Parent or Loan Party which is a party thereto and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such Person) in full force and effect, and the Parent or the applicable Loan Party has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by it.

(6) **Authorizations, etc.** All Authorizations of the Parent and its Subsidiaries which are necessary to properly conduct their respective business as of the Closing Date are in full force and effect and neither the Parent nor any of its Subsidiaries is in default with respect thereto, except where the absence of such Authorization, the failure to maintain such Authorization in full force and effect, or the default thereunder would not reasonably be expected to result in a Material Adverse Change. The Material Authorizations described in Schedule 8.01(6) or as hereafter disclosed pursuant to Section 9.01(2)(v) in the Compliance Certificate required to be delivered for the Financial Quarter in which such Material Authorization was obtained are the only Authorizations necessary to properly conduct the business of the Parent and its Subsidiaries, the absence of which would reasonably be expected to result in a Material Adverse Change (it being understood that this representation will not be deemed breached pending the timely disclosure of any such subsequently obtained Material Authorizations).

(7) **Litigation and Other Proceedings.** As at the date hereof there is no litigation, arbitration, claim, dispute (whether labour, industrial or otherwise), governmental investigation, proceeding or inquiry pending or, to its knowledge, threatened against or affecting the Parent or any of its Subsidiaries which would reasonably be expected to result in a Material Adverse Change.

(8) **Ownership of Assets.** The Parent and its Subsidiaries have good and marketable title to their respective Assets, in each case free and clear of all Liens other than Permitted Liens.

(9) **Subsidiaries, etc.** As of the date hereof, no Person has any right or option to purchase or otherwise acquire any of the issued and outstanding Equity Interests of the Parent or any of its Subsidiaries. Each of the Borrowers is a Wholly-Owned Subsidiary of Parent.

(10) **Ownership/Lease of Real Property.** Except as set forth on Schedule 8.01(10), the Parent and its Subsidiaries do not own or lease any real property as at the date hereof.

(11) **Place of Business.** As at the date hereof, the only jurisdictions (or registration districts within such jurisdictions) in which the Borrowers or any of other Loan Party has any place of business or stores any tangible personal property with a realizable value in excess of \$500,000 are set out in Schedule 8.01(11).

(12) **No Default Under this Agreement.** No Default (to the knowledge of the Parent) or Event of Default has occurred and is continuing.

(13) **Material Contracts.** As at the date hereof, neither the Parent nor any of its Subsidiaries is a party or otherwise subject to or bound or affected by any Material Contract, except as set out in Schedule 8.01(13). Except as set forth in Schedule 8.01(13), at the date hereof, all Material Contracts are in full force and effect, and neither the Parent nor any of its Subsidiaries, or to the Parent's knowledge, any other party to any such agreement, is in material default with respect thereto.

(14) **Compliance with Other Legal Obligations.** Neither the Parent nor any of its Subsidiaries is in violation of any judgment or decree, relating in any way to it, to the present operation of its business or to its Assets, the breach or violation of which would reasonably be expected to result in a Material Adverse Change.

(15) **Taxes.** As of the date hereof the Parent and its Subsidiaries have filed or caused to be filed all U.S. federal income and all other material tax returns which, to its knowledge, are required to have been filed, and have paid all Taxes shown to be due and payable on said returns or on any written assessments made against it or any of its property and all other material amounts of Taxes, fees or other charges imposed on it or any of its property by any Governmental Entity (other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP or other applicable accounting principles have been provided in its books) and no Tax Liens (other than Permitted Liens) have been filed and, to the knowledge of the Parent, no claims are being asserted with respect to any such Taxes, fees or other charges, in each of the foregoing cases, which would reasonably be expected to result in a Material Adverse Change.

(16) **Financial Statements/Other Information.** The financial statements of the Parent which have been provided to the Agent pursuant to Section 9.01(1) are complete in all material respects, and fairly present the consolidated financial condition and business operations of the Parent in all material respects, as at the date thereof and (subject to Section 1.06) are prepared in accordance with GAAP (subject, in the case of any interim financial statements, to normal year-end adjustments and the absence of footnotes). No written information, exhibit or report furnished by the Parent or any of its Subsidiaries to the Agent or the Lenders for use in connection with the transactions contemplated by this Agreement or any of the other Loan Documents contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statement contained therein not materially misleading in the circumstances in which it was made.

(17) **Compliance with Laws.** (i) The Parent and its Subsidiaries and the operation of their respective business and Assets, are in compliance with all applicable Laws; (ii) the business and other assets of the Parent and its Subsidiaries are in compliance with all Environmental Laws, and possess and are operated in compliance with all Environmental Permits which are required under all applicable Environmental Laws for the operation of such business and Assets, in each case, where such non-compliance or non-possession would reasonably be expected to result in a Material Adverse Change. To the knowledge of the Parent, the Borrower's and its Subsidiaries' business and Assets are not subject to any fact, condition or circumstance that could result in any liability under any Environmental Laws which would reasonably be expected to result in a Material Adverse Change.

(18) **Pension Plan.** Schedule 8.01(18) sets forth a complete list and description of all Pension Plans established or maintained by the Parent or any its Subsidiaries as at the date hereof. All such Pension Plans are being operated, administered and maintained in compliance with their respective terms and all applicable Laws, except for such instances of non-compliance as have not resulted in and would not reasonably be expected to result in a Material Adverse Change. All premiums, contributions and any other amounts required by applicable Pension Plan documents or applicable Laws to be paid or accrued by the Parent and its Subsidiaries, to the extent failure to do so would reasonably be expected to result in a Material Adverse Change, are being paid or accrued as required.

(19) **Environmental Matters.**

(a) Neither the Parent nor any of its Subsidiaries has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against the Parent or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the Environment or violation of any Environmental Laws, except, in each case, as such would not reasonably be expected to result in a Material Adverse Change;

(b) neither the Parent nor any of its Subsidiaries has knowledge of any facts, conditions or circumstances which would reasonably be expected to give rise to any claim, public or private, of violation of Environmental Laws or damage to the Environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, as such would not reasonably be expected to result in a Material Adverse Change;

(c) to the knowledge of the Parent, neither the Parent nor any of its Subsidiaries has used, generated, transported, treated or stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has Disposed of or Released any Hazardous Materials in a manner in violation of any Environmental Laws in each case in any manner that would reasonably be expected to result in a Material Adverse Change; and

(d) to the best of the knowledge of the Parent, all buildings on all real properties now owned, leased or operated by the Parent or any of its Subsidiaries are in compliance with applicable Environmental Laws and possess and are operated in compliance with all Environmental Permits which are required under all applicable Environmental Laws for the operation of such business and Assets, except where failure to comply would not reasonably be expected to result in a Material Adverse Change.

(20) **Insurance.** The Parent and its Subsidiaries maintain insurance (including business interruption insurance, property insurance and general liability insurance) with responsible insurance carriers and in such amounts and covering such risks as have been determined by the Parent and its Subsidiaries to be appropriate and prudent in the circumstances.

(21) **Material Adverse Change.** Since the Closing Date there has occurred no event or development which has resulted in or which would reasonably be expected to result in a Material Adverse Change.

(22) **Intellectual Property.** Schedule 8.01(22) sets forth a complete list and a description at the date hereof of all material and registered, or applications for registration of, Owned Intellectual Property of the Parent and its Subsidiaries used in the business of the Parent and its Subsidiaries. The Parent and its Subsidiaries own such Owned Intellectual Property free and clear of any Liens (other than Permitted Liens). The Parent and its Subsidiaries own or license all Intellectual Property required to be able to carry on its business and all such licenses are in full force and effect except where the failure to own or licence such Intellectual Property or to maintain such licenses in full force and effect would not reasonably be expected to result in a Material Adverse Change.

(23) **Security.** The Security creates a valid Lien in and to the Assets of the Parent or its applicable Subsidiary described therein in favour of Agent, subject to no Liens except Permitted Liens.

(24) **No Restrictions or Limitations.** There are no consensual limitations or restrictions in effect on the ability of any Subsidiary of the Parent to make any Distributions to the Parent or any other Subsidiary of the Parent, except as set forth in this Agreement or permitted by Section 9.02(5) of this Agreement.

(25) **Labour Matters.** There is no existing or, to the best of the knowledge of the Parent, threatened strike, lock-out or other dispute relating to any collective bargaining agreement to the Parent or any of its Subsidiaries is a party which would reasonably be expected to result in a Material Adverse Change. Schedule 8.01(25) contains a list of collective bargaining agreements to which the Parent or any of its Subsidiaries is a party at the date hereof.

(26) **Solvency.** On the Closing Date, after giving effect to the Accommodations hereunder, the Parent, on a Consolidated Basis, is Solvent and each Borrower, on an individual basis, is Solvent.

(27) **ERISA.** Neither the Parent nor any of its Subsidiaries sponsor, maintain, participate in or contribute to, nor has it ever sponsored, maintained, participated in, or contributed to, any Title IV Plan, Multiemployer Plan or any other ERISA Plan that is subject to Sections 412, 430 or 431 of the Code. No ERISA Affiliate sponsors, maintains, participates in or contributes to, nor have any of them ever sponsored, maintained, participated in, or contributed to, any Title IV Plan, Multiemployer Plan or any other ERISA Plan that is subject to Sections 412, 430 or 431 of the Code, except where such sponsorship, maintenance, participation or contribution would not reasonably be expected to result in a Material Adverse Change.



(28) **Margin Stock.** Neither the Parent nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No portion of the Secured Obligations is secured directly or indirectly by Margin Stock.

(29) **Compliance with Foreign Corrupt Practices Act.** Neither the Parent nor any of its Subsidiaries, nor to the knowledge of the Parent, any of its or their respective officers, directors, employees or agents has, in carrying out the Business (i) used or is using any corporate funds for any contributions, gifts, entertainment or other expenses relating to political activity that would be illegal, (ii) used or is using any corporate funds for any direct or indirect illegal payments to any foreign or domestic governmental officials or employees, (iii) violated or is violating any provision of the United States Foreign Corrupt Practices Act of 1977 or the *Corruption of Foreign Public Officials Act* (Canada) or any Law of similar effect, (iv) has established or maintained, or is maintaining, any illegal fund or illegal corporate monies or other illegal properties or (v) made any bribe, illegal rebate, illegal payoff, influence payment, kickback or other illegal payment of any nature.

(30) **Anti-Terrorism; Anti-Money Laundering.** To the extent applicable, the Parent and each of its Subsidiaries is in compliance, in all material respects, with the Patriot Act and all AML Legislation. To the extent applicable, neither the Parent nor any of its Subsidiaries nor, to the knowledge of the Parent, any director or officer of the Borrower or any of its Subsidiaries is subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) or similar foreign sanctions.

(31) **Tax Jurisdiction.** The Canadian Borrower is a resident of Canada for purposes of the Income Tax Act (Canada) and each U.S. Borrower is a “U.S. person” as defined in Section 7701(a)(30) of the Code.

(32) **Investment Company Act.** No Loan Party or any Subsidiary of the Parent is an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act of 1940 (United States)).

#### **Section 8.02. Survival of Representations and Warranties.**

The representations and warranties herein set forth or contained in any certificates or documents delivered to the Agent pursuant hereto shall not merge in or be prejudiced by and shall survive any Accommodation hereunder and shall continue in full force and effect (as of the date when made or deemed to be made) so long as any amounts are owing by any of the Borrowers to the Agent or the Lenders hereunder or the Agent or any Lenders has any obligation under this Agreement.

**ARTICLE 9  
COVENANTS OF THE BORROWER**

**Section 9.01. Affirmative Covenants.**

So long as any amount owing hereunder remains unpaid or the Agent or any Lender has any obligation under this Agreement and unless consent is given in accordance with Section 19.01 hereof, the Parent shall:

**(1) Reporting Requirements.** Prepare (where applicable, in accordance with GAAP) and deliver to the Agent:

(a) as soon as available and in any event within 45 days after the end of each Financial Quarter in each Financial Year, copies of the unaudited financial statements of (i) the Parent and its subsidiaries on a consolidated basis (i.e. including Ting Fiber, LLC and its subsidiaries); (ii) the Parent and its Subsidiaries on a Consolidated Basis (i.e. excluding Ting Fiber, LLC and its subsidiaries); and (iii) Ting Fiber, LLC and its subsidiaries on a consolidated basis, in each case, as of the end of such Financial Quarter, in each case, all prepared in accordance with GAAP (subject to year-end adjustments and excluding footnotes) and stating in comparative form the respective consolidated figures as of the end of and for the corresponding period in the previous Financial Year, and certified by a senior financial officer of the Parent to the effect that the statements present fairly, in all material respects, the consolidated financial position of such Person and its subsidiaries as of the end of such Financial Quarter and the related consolidated results of operations and changes in financial position for such Financial Quarter in accordance with GAAP, consistently applied (subject to year-end adjustments and excluding footnotes); provided however that the financial statements set forth in clause (ii) above shall be limited to an unaudited balance sheet, income statement and cash flow statement with comparative respective figures for the corresponding period in the previous Financial Year commencing with the Fiscal Quarter ending March 31, 2023;

(b) as soon as available and in any event within 120 days after the end of each Financial Year in respect of the Parent and beginning with the Financial Year ending 2022 in respect of Ting Fiber, LLC and its subsidiaries, copies of the audited consolidated financial statements of (i) the Parent and its subsidiaries (i.e. including Ting Fiber, LLC and its subsidiaries); and (ii) Ting Fiber, LLC and its subsidiaries, in each case, as of the end of such applicable Financial Year, in each case, prepared in accordance with GAAP and stating in comparative form the respective consolidated figures as of the end of and for the previous Financial Year, and accompanied by a report thereon of independent chartered professional accountants of recognized national standing in the United States (without a “going-concern” or like qualification or exception (other than in respect of the upcoming maturity of the Credit Facility and/or any potential default of the Parent under the financial covenants in this Agreement) and otherwise without any qualification as to the scope of such audit) to the effect that the consolidated financial statements present fairly, in all material respects, the consolidated financial position of such Person and its subsidiaries as of the end of such Financial Year and the consolidated results of the operations and changes in financial position for such Financial Year in conformity with GAAP consistently applied;

(c) concurrently with the financial statements furnished pursuant to (a) and (b) above, a Compliance Certificate duly executed by a senior officer or other qualified officer of the Parent and a management discussion and analysis in respect of any material variances between the actual results to date and the projections contained in the most recent Annual Business Plan presented to the Agent and the Lenders and currently with the financial statements furnished pursuant to (b) above, a management prepared reconciliation of such financial statements to remove the financial results of Ting Fiber, LLC and its subsidiaries from the financial results of the Parent; and

(d) not less than 45 days after the commencement of each Financial Year, the Annual Business Plan for such Financial Year.

(2) **Additional Reporting Requirements.** Deliver to the Agent (i) as soon as practicable after the Parent or any of its Subsidiaries becomes aware of the occurrence of each Default or Event of Default, a statement of a senior officer of the Parent setting forth the details of such Default or Event of Default and the action which the Parent proposes to take or has taken with respect thereto; (ii) promptly, and in any event within ten days after the Parent or any of its Subsidiaries receives notice of or becomes aware of any suit, proceeding or similar action commenced or threatened by any Governmental Entity or other Person which, if determined adversely, would reasonably be likely to result in a Material Adverse Change; (iii) promptly, and in any event within ten (10) days after the Parent or any of its Subsidiaries receives notice of or becomes aware of any cancellation or non-renewal of any Material Authorizations or any other licences, permits or other regulatory approvals (other than non-renewals in the ordinary course of business) where such cancellation or non-renewal is reasonably likely to result in a Material Adverse Change; (iv) notification of any notice received from, or other action taken by or proposed to be taken by, any creditor (other than Lenders) of the Parent or any of its Subsidiaries which would reasonably be expected to result in a Material Adverse Change; (v) together with each Compliance Certificate, written notice of any previously undisclosed Subsidiaries of the Parent, any new Material Authorizations or Material Contracts, any cancellation or termination of any Material Authorization or Material Contract, any default or event of default under any Material Authorization or Material Contract of which the Parent has knowledge, any additional material and registered, or applications for registration of, Owned Intellectual Property of the Parent or any of its Subsidiaries used in the business of the Parent or any of its Subsidiaries, any additional Material Owned Real Property or Material Leased Real Property of the Parent or any of its Subsidiaries, any jurisdiction not identified in Schedule 8.01(11) in which the Parent or any of its Subsidiaries has any place of business or stores any tangible personal property with a realizable value in excess of \$500,000 (or the Equivalent Amount in any other currency), any other Investment by the Parent or any of its Subsidiaries in any Person other than a Guarantor; (vi) together with each Compliance Certificate, notification of Eligible Hedging Agreements entered into by the Parent or any Loan Party; (vii) as soon as practicable, any change in the Financial Year of the Parent; and (viii) as soon as practicable after any senior officer of the Parent or any Loan Party becomes aware of any change in any Loan Party's named executive officers as required to be disclosed to the SEC; (ix) as soon as practicable after any senior officer of the Parent or any Loan Party becomes aware of the discharge by any Loan Party of its present public accounting firm or any withdrawal or resignation by such public accounting firm; and (x) such other information respecting the condition, operations, financial or otherwise, of the business of the Parent or any of its Subsidiaries as the Agent may from time to time reasonably request.

(3) **Corporate Existence, Ownership of Subsidiaries.** Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, subject to Section 9.02(3), its corporate, partnership or other existence unless, as to any Subsidiary of the Parent, in the good faith judgment of the Parent, the termination of or failure to preserve and keep in full force and effect such existence would not reasonably be expected to result in a Material Adverse Change.

(4) **Compliance with Laws, etc.** Comply, and cause each of its Subsidiaries to comply, with the requirements of all applicable Laws (including Environmental Laws and applicable Laws relating to any Pension Plan) except where such non-compliance would not reasonably be expected to result in a Material Adverse Change.

(5) **Conduct of Business and Maintenance of Properties.** Carry on the Business through the Parent and its Subsidiaries. Conduct, and cause each of its Subsidiaries to conduct, its business in a prudent manner and consistent with good business practices. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its and their respective Assets in all material respects in good repair, working order and condition (other than ordinary wear and tear) and in material compliance with all applicable Laws (except where failure to so comply would not reasonably be expected to have a Material Adverse Change) and, from time to time, make all needful and proper repairs, renewals, replacements, additions and improvements thereto, so that the Business may be properly conducted at all times in accordance with prudent business management, provided that this Section shall not prevent the Parent or any of its Subsidiaries from discontinuing, in whole or in part, the operation or the maintenance of any of its properties if such discontinuance is desirable in the conduct of the Business and the Parent has concluded that such discontinuance would not reasonably be expected to result in a Material Adverse Change or a Default or Event of Default.

(6) **Books and Records.** Keep, and cause each of its Subsidiaries to keep, proper books of account and records in accordance with sound and consistent accounting practices, covering all of its business and affairs on a current basis.

(7) **Payment of Taxes and Claims.** Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all Taxes, assessments and governmental charges or levies imposed upon it or upon its Assets; and (ii) all lawful Claims which, if unpaid, might by Law become a Lien (other than a Permitted Lien) upon its Assets, except any such Tax, assessment, charge, levy or Claim which is being contested in good faith and by proper proceedings, and except for any Permitted Liens or unless the non-payment of such Taxes, assessments, charges, levies or Claims would not reasonably be expected to result in a Material Adverse Change.

(8) **Cure Defects.** Promptly upon having knowledge thereof, cure or cause to be cured any defects in the execution and delivery of any of the Loan Documents or any of the other agreements, instruments or documents contemplated thereby or executed pursuant thereto or any defects in the validity or enforceability of any of the Loan Documents and execute and deliver or cause to be executed and delivered all such agreements, instruments and other documents as the Agent may consider reasonably necessary or desirable for the foregoing purposes.

(9) **Property Insurance.** Cause all the property and assets of the Borrower and its Subsidiaries to be insured and kept insured against loss or damage in such amounts and with such deductibles as are in accordance with good business practice and with financially sound and reputable insurers, all as determined by the Parent to be appropriate and prudent in the circumstances. Pay, and cause each of its Subsidiaries to pay, all premiums necessary for such purpose as the same shall become due and provide particulars of all such policies and all renewals thereof to the Agent upon written request. Add or cause each of the Loan Parties to add the Agent, on behalf of the Secured Parties, as lender loss payee as its interest may appear under such property insurance policies, together with a customary mortgage endorsement on terms satisfactory to the Agent and the Lenders, acting reasonably.

(10) **Liability Insurance.** Maintain and cause its Subsidiaries to maintain public liability and other liability insurance in such amounts as are in accordance with good business practice and with financially sound and reputable insurers and to pay or cause to be paid all premiums necessary for such purpose as the same shall become due and provide particulars of all such policies and all renewals thereof to the Agent upon request. Add or cause each of the Loan Parties to add the Agent, on behalf of the Secured Parties, as additional insured as its interest may appear under such liability insurance policies.

(11) **Use of Proceeds of Accommodations.** Use, or cause the Borrowers to use, the proceeds of Accommodations hereunder for the purposes specified in Section 2.03, and not use or permit any proceeds of any Accommodation to be used, either directly or indirectly, (i) for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock or repaying or otherwise refinancing any Funded Debt of any Loan Party or any other Person incurred to purchase or carry any Margin Stock, or (ii) in violation of any applicable antibribery, sanctions and/or corruption laws and regulations.

(12) **Authorizations, Intellectual Property.** Except as contemplated by Schedule 9.01(12), maintain, and cause each of its Subsidiaries to maintain, (i) any Material Authorizations in good standing, and (ii) except as contemplated by Section 8.01(22), any Owned Intellectual Property in the name of the Parent or any of its Subsidiaries, except in each case where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

(13) **Environmental.** Will and will cause each of its Subsidiaries to:

(a) use and operate all of its facilities and properties in compliance with all Environmental Laws, keep all necessary Environmental Permits in effect and remain in material compliance therewith, and handle all Hazardous Materials in compliance with all applicable Environmental Laws and keep all facilities and properties free and clear of all Liens arising under Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Change;

(b) promptly upon becoming aware of the same, notify the Agent and take all necessary action available to it in order to promptly comply and have dismissed any actions and proceedings relating to non-compliance with Environmental Laws which, if adversely determined, would reasonably be expected to have a Material Adverse Change; and

(c) to the extent consistent with reasonable and prudent environmental remediation standards or to the extent required by Environmental Law, promptly investigate and remediate any Release of any Hazardous Materials at any of its facilities or properties except where failure to so respond, remove or remedy would not reasonably be expected to have a Material Adverse Change.

(14) **Inspections.** Permit and cause each of its Subsidiaries to permit the Agent and its representatives and consultants to visit and inspect any of its Assets, to, subject to applicable privacy Laws and to documents reasonably determined by the Parent and its counsel to be subject to solicitor/client privilege, examine its' and its Subsidiaries' books and records and to make copies and take extracts therefrom, and to discuss the Parent's and its Subsidiaries' affairs, finances and accounts with the senior officers thereof or (following the occurrence of an Event of Default and in the presence of the Parent's personnel) the Parent's independent auditors, all at such reasonable times as the Agent may reasonably request upon reasonable prior notice to the Parent by the Agent up to two times per year provided that no Event of Default has occurred and is continuing; provided that prior to the occurrence of an Event of Default which is continuing any such visits, inspections, examinations and discussions shall be at the sole cost and expense of the Agent after the first such visit in each Financial Year.

(15) **Protect Security Interests.** Except for the filing of renewal or financing change statements and the making of other filings by the Agent and the Lenders as secured party or assignee, at all times take all action and supply the Agent and the Lenders with all information that they may reasonably request as necessary to maintain the Security as valid and perfected first ranking Security charging the Assets covered thereby, subject to Permitted Liens.

(16) **Further Assurances.** At the Parent's cost and expense, duly execute and deliver and cause each of the other Loan Parties to duly execute and deliver, upon request by the Agent, such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Agent to carry out more effectually the provisions and purposes of the Loan Documents.

(17) **Maintenance of Bank Accounts and Service Accounts.** Maintain all of its bank accounts and Service Agreements with one or more of the Lenders or Affiliates thereof; provided that Parent and its Subsidiaries (i) may maintain bank accounts with an aggregate balance of up to \$2,500,000 at any one time with banks and financial institutions other than the Lenders and their respective Affiliates; and (ii) eNom, LLC may continue to maintain its bank accounts with Silicon Valley Bank existing as at the Closing Date provided that the aggregate of all amounts held in such accounts shall not exceed \$3,000,000.

(18) **Pension Plans.** Furnish to the Agent as soon as possible, and in any event within thirty (30) days after the Parent knows or has reason to know thereof, notice of (A) the establishment by the Borrower or any of its Subsidiaries of any Pension Plan, (B) any failure by the Borrower or any of its Subsidiaries to make any material contributions required to be made to any Pension Plan, (C) the receipt of any notice from any Governmental Authority, trustee or actuary in relation to any non-compliance with any laws, regulations and rules applicable to any Pension Plan, including all funding requirements, and the respective requirements of the governing documents for such Pension Plan which would reasonably be expected to have a Material Adverse Change or (D) the receipt of any notice from any Governmental Entity, trustee or actuary regarding any additional contributions being required to be made in relation to any Pension Plan with respect to any material actual or potential under funding being estimated or determined in relation to such Pension Plan.

(19) **KYC and Other Similar Information.** Upon request by a Lender, provide and/or deliver such “know your client” and other documents as they may reasonably request in connection with applicable AML Legislation (including a Beneficial Ownership Certification in relation to any of Parent or any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation) or similar information as may be reasonably requested by such Lender.

(20) **Post-Closing Undertaking.** Perform and satisfy to the satisfaction of the Agent and its counsel the requirement (the “**Post-Closing Undertaking**”) listed in Schedule 9.01(20) on or before the date by which such Post-Closing Undertaking is required to be performed pursuant thereto. The Agent, by instrument in writing and without any consent from any of the Lenders, may, in its sole and absolute discretion, extend any deadline for completion of the Post-Closing Undertaking.

#### **Section 9.02. Negative Covenants.**

So long as any amount owing hereunder remains unpaid or the Agent or any Lender has any obligation under this Agreement, and unless consent is given in accordance with Section 19.01 hereof, the Parent shall not:

(1) **Debt.** Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Funded Debt other than Permitted Funded Debt.

(2) **Liens.** Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien on any of its Assets, other than Permitted Liens.

(3) **Disposition of Assets.** Directly or indirectly sell or otherwise dispose of, or permit any of its Subsidiaries to sell or otherwise dispose of, any of its Assets, except that the Parent and its Subsidiaries may: (i) sell or transfer Assets to any other Loan Party; (ii) sell or dispose of Assets in an aggregate amount per annum of not more than \$22,500,000, provided that the Net Proceeds of any sale or disposition of Assets in excess of \$12,500,000 are subject to compliance with Section 2.05(1) hereof (to the extent applicable), (iii) sell inventory and immaterial assets in the ordinary course of business, (iv) Dispose of obsolete, surplus or worn-out property in the ordinary course of business; (v) sell or Dispose of machinery or equipment no longer used or useful in the business of any Loan Party; (vi) Dispose of property to the Borrower or any Guarantor; and (vii) effect the 2022 Reorganization.

(4) **Guarantees.** Become obligated under, or permit any of its Subsidiaries to become obligated under, guarantees or other financial assistance except: (i) guarantees which comprise part of the Security; (ii) guarantees in respect of Permitted Funded Debt incurred by the Parent or any of its Subsidiaries; (iii) guarantees incurred by Parent or any of its Subsidiaries in the ordinary course of business; (iv) Investments permitted pursuant to Section 9.02(5).

(5) **Investments.** Make or acquire, or permit any of its Subsidiaries to make or acquire, any Investments, except that the following Investments may be made or acquired if both immediately before and immediately after each such Investment no Default or Event of Default has occurred and is continuing:

- (i) Permitted Acquisitions;
- (ii) Investments in a Loan Party;
- (iii) Investments (other than Investments of Material IP) in a Subsidiary of the Parent that is not a Loan Party or Investments in any other Person, in each case, provided that the aggregate amount of all Investments made by the Parent or any of its Subsidiaries in Subsidiaries of the Parent that are not Loan Parties or in any other Person does not at any time exceed \$5,000,000 in aggregate;
- (iv) Investments in cash or Cash Equivalents;
- (v) loans and advances to officers, directors, or employees of any Loan Party in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount not to exceed \$250,000 at any time outstanding;
- (vi) Investments contemplated by the 2022 Reorganization; and
- (vii) Investments by the Borrower or any Guarantor in Ting Fiber, LLC and its subsidiaries in the form of indebtedness owing to the Borrower or any Guarantor so long as no Default or Event of Default has occurred and is continuing or would result therefrom, (i) in an unlimited amount at any time that the Total Funded Debt to Adjusted EBITDA Ratio is less than 2.00:1 (both before and after giving effect to any such Investment and any Funded Debt incurred in connection therewith); and (ii) in an amount not to exceed \$15,000,000 during any 12 month period at any time that the Total Funded Debt to Adjusted EBITDA Ratio is less than 2.50:1 (both before and after giving effect to any such Investment and any Funded Debt incurred in connection therewith).

(6) **Capital Expenditures.** Incur, or permit any of its Subsidiaries to incur, Capital Expenditures, except that the following Capital Expenditures may be incurred if both immediately before and immediately after each such Capital Expenditure no Default or Event of Default has occurred and is continuing: Capital Expenditures in any Financial Year in a maximum aggregate amount of not more than 115% of the forecasted Capital Expenditures set out in the Annual Business Plan submitted by the Parent to the Agent and the Lenders in respect of such Financial Year.



(7) **Distributions.** Make, or permit any of its Subsidiaries to make, any Distributions, except as follows: (i) the Borrower and its Subsidiaries may make Distributions to any Loan Party; (ii) Distributions among the Parent and its Subsidiaries provided that both immediately before and immediately after each such Distribution no Default or Event of Default has occurred and is continuing; (iii) Distributions contemplated by the 2022 Reorganization; and (iv) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the payment in cash by the Parent of dividends, returns of capital or other Distributions (including Share Repurchases) in respect of its Equity Interests, at any time that the Total Funded Debt to Adjusted EBITDA Ratio is less than 2.00:1 (both before and after giving effect to any such dividend, return of capital or other Distribution (including Share Repurchases) and any Funded Debt incurred in connection therewith).

(8) **Corporate Changes.** Materially change, nor permit any of its Subsidiaries to materially change, the nature of its business consummate, nor permit any of its Subsidiaries to consummate, any Division/Series Transaction; or enter into, nor permit any of its Subsidiaries to enter into, or any transaction whereby all or a substantial portion of its property would become the property of any other Person, whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise, without the prior written consent of the Majority Lenders; except that any of the foregoing transactions may take place (i) among the Parent and its Subsidiaries (and no other Persons) if prior written notice is given to the Agent, a Material Adverse Change will not occur as a result, and the Parent and its Subsidiaries concurrently provide such additional or replacement Security as the Agent may reasonably require, or (ii) if arising in connection with the 2022 Reorganization (including, for greater certainty, the merger of Tucows (Emerald), LLC and eNom, LLC following the date of this Agreement to form the limited liability company continuing with the name “eNom, LLC”; provided that, eNom, LLC shall only become a Borrower hereunder once the Agent and the Lenders have received and are satisfied with such documents as they may reasonably request with respect to eNom, LLC in connection with applicable AML Legislation (including the Patriot Act) and the Agent has delivered a written notice to the Parent Borrower confirming same).

(9) **Payments in respect of Subordinated Debt.** Make, or permit any Subsidiary to make, any payment in respect of principal, interest, fees or any other amounts in respect of Subordinated Debt except to the extent (if any) expressly permitted under the terms and conditions of the subordination and postponement agreement relating thereto.

(10) **Pension Plans.** Establish, assume or otherwise become a party to or liable under, or permit any of its ERISA Affiliates to establish, assume or otherwise become a party to or liable under, any Pension Plan.

(11) **Financial Year.** Change its Financial Year (which for greater certainty presently ends on December 31st in each year), except with the prior written consent of the Majority Lenders,

(12) **Auditors.** Change its auditors from its current audit firm (KPMG LLP) to a firm that is not a nationally recognized auditing firm, except with the prior written consent of the Majority Lenders.

(13) **Dealing with Related Parties.** Other than the Management Services Agreement and the transactions contemplated by the 2022 Reorganization, enter into, or permit any of its Subsidiaries to enter into, any contract with any Related Party outside the ordinary course of business unless the terms and conditions thereof (specifically including the price) are commercially reasonable.

(14) **Use of Advances.** Use, or permit any of its Subsidiaries to use, the proceeds of any Accommodation for any purposes other than those expressly contemplated in this Agreement.

(15) **New Subsidiaries.** Create or acquire any Subsidiary unless (a) all of the issued and outstanding shares in the capital of such Subsidiary are owned directly or indirectly by Parent; and (b) subject to the terms and conditions hereof, such new Subsidiary provides a Guarantee in respect of the Obligations and all Security required to be provided by it hereunder.

(16) **Hedging Agreements.** Enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any interest rate or currency rate hedging agreement (or similar understanding or obligation), unless such agreement is (i) an Eligible Hedging Agreement entered into by a Loan Party for *bona fide* hedging purposes and not for speculative purposes, or (ii) other unsecured hedging agreements for *bona fide* hedging purposes and not for speculative purposes.

(17) **Amendments to Organizational Documents/Management Services Agreement.** Amend, or permit any of its Subsidiaries to amend, (i) its organizational documents in a manner that would be prejudicial in any material respect to the interests of the Agent or any of the Lenders under the Loan Documents; or (ii) the Management Services Agreement that would materially reduce or postpone the payments required thereunder by the parties thereto other than payments to be made to the Borrower and its Subsidiaries.

(18) **No Change of Name.** Change, or permit any of the other Loan Parties to change, its name or adopt a French form of name or change the jurisdiction of its organization, or its place of administration or principal office or chief executive office, in each case, without providing the Agent prior written notice thereof.

(19) **Location of Assets in Other Jurisdictions.** Except for property in transit in the ordinary course of business, acquire, or permit any Guarantor to acquire, any Assets outside of the jurisdictions identified in Schedule 8.01(11) with a value in excess of \$500,000 per jurisdiction or move any property from one jurisdiction to another jurisdiction with a value in excess of \$500,000 where the movement of such property would cause the Lien of the Security over such property to cease to be perfected under applicable Law, or, subject to the terms and conditions hereof, suffer or permit in any other manner any of its property with a value in excess of \$1,000,000 to not be subject to the Lien of the Security or to be or become located in a jurisdiction as a result of which the Lien of the Security over such property is not perfected, unless the Parent or the applicable Guarantor has executed and delivered to the Agent all Security and all financing or registration statements in form and substance satisfactory to the Agent which the Agent or its counsel from time to time deem necessary or advisable to ensure that that Security constitutes a perfected first priority Lien (subject only to Permitted Liens) over such property notwithstanding the movement or location of such property as aforesaid together with such supporting certificates, resolutions, opinions and other documents as the Agent may deem necessary or desirable in connection with such security and registrations, acting reasonably.

### **Section 9.03. Financial Covenants.**

So long as any amount owing hereunder remains unpaid or the Agent or any Lender has any obligations under this Agreement, and unless consent is given in accordance with Section 19.01 hereof, Parent shall:

(1) **Leverage Ratio.** Maintain, at all times, a Total Funded Debt to Adjusted EBITDA Ratio of not more than (i) 4.0:1.00 at any time from and after the date hereof to and including September 29, 2023; and (ii) 3.75:1.00 from and after September 30, 2023.

(2) **Interest Coverage Ratio.** Maintain, as at the end of each Financial Quarter, an Interest Coverage Ratio of not less than 3.00:1.00.

(3) **Calculation of Financial Covenants.**

(a) If the Total Funded Debt to Adjusted EBITDA Ratio or the Interest Coverage Ratio are being calculated at any time after the date on which the Parent or any of its Subsidiaries has completed an Acquisition or Disposition (which term, for the purposes of this definition, shall include any event or occurrence whereby a Subsidiary ceases to carry on business) of a division, line of business or of a Subsidiary, the amount of Adjusted EBITDA and Interest attributable to the subject of such Acquisition or Disposition (or Funded Debt incurred or repaid in respect of such Acquisition or Disposition) to be included, in the case of an Acquisition, or excluded, in the case of a Disposition, in calculating such ratio will (i) in respect of Adjusted EBITDA, be calculated on a *pro forma* basis, (y) in the case of an Acquisition, giving effect to the actual results of the prior owners of such Asset; and (z) in the case of a Disposition of an Asset, the actual results of the Borrower or its applicable Subsidiary in respect of such Asset; and (ii) in respect of Interest Expense, be calculated on a *pro forma* basis, based on the amount of Funded Debt created, incurred or assumed by the Borrower or its applicable Subsidiary in connection with the Acquisition of such Asset (or repaid in connection with a Disposition), for greater certainty, in the case of each of (i) and (ii) above as if such Asset was Acquired or Disposed of as of the first day of the period in respect of which the calculations are being made.

## **ARTICLE 10 EVENTS OF DEFAULT**

### **Section 10.01. Events of Default.**

If any of the following events (each an “**Event of Default**”) shall occur and be continuing:

- (1) a Borrower shall fail to pay any principal amount of the Accommodations Outstanding when such amount becomes due and payable;
- (2) a Borrower shall fail to pay any interest or Fees when the same become due and payable hereunder and such failure shall remain unremedied for three Business Days;
- (3) any representation or warranty or certification made or deemed to be made by or on behalf of the Parent or any of its Subsidiaries in this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed to be made;

(4) the Parent or any of its Subsidiaries shall fail to perform, observe or comply with any of the covenants contained in (i) Section 9.01(20), (ii) Section 9.02; or (iii) Section 9.03;

(5) the Parent or any of its Subsidiaries shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document to which it is a party and such failure shall remain unremedied for 30 days following notice thereof by the Agent to the Parent;

(6) the Parent or any of its Subsidiaries shall fail to pay any amount of the principal of or premium or interest on any Funded Debt (excluding any Funded Debt hereunder) which is outstanding in an aggregate principal amount exceeding \$5,000,000 (or the Equivalent Amount in any other currency), when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Funded Debt without waiver of such failure by the holder or holders of such Funded Debt on or before the expiration of such period; or any other event shall occur or condition shall exist, and shall continue after the applicable grace period, if any, specified in any agreement or instrument relating to any such Funded Debt without waiver of such failure by the holder or holders of such Funded Debt on or before the expiration of such period, if the effect of such event is to accelerate, or permit the acceleration of such Funded Debt; or any such Funded Debt shall be declared to be due and payable in accordance with its terms prior to the stated maturity thereof;

(7) any final judgment or order (subject to no further right of appeal) for the payment of money in excess of \$5,000,000 (or the Equivalent Amount in any other currency) which is not covered by insurance is rendered against or in respect of the Parent or any of its Subsidiaries or any of their respective Assets and either (i) enforcement proceedings have been commenced by a creditor upon the judgment or order, or (ii) there is any period of 30 consecutive days during which a stay of enforcement of the judgment or order, by reason of a pending appeal or otherwise, is not in effect;

(8) the Parent or any of its Subsidiaries (i) is adjudicated insolvent or generally is not able to pay its debts as they become due; (ii) admits in writing its inability to pay its debts generally or makes a general assignment for the benefit of creditors; (iii) institutes or has instituted against it any proceedings seeking (x) to adjudicate it a bankrupt or insolvent, (y) liquidation, winding-up, administration, reorganization, arrangement, adjustment, protection, release or composition of it or its Funded Debt under any Law relating to bankruptcy, insolvency, reorganization or release of debtors including any plan of compromise or arrangement or other corporate proceedings involving or affecting its creditors (except to the extent permitted in Section 9.02(3)), or (z) the entry of an order for relief or the appointment of a liquidator, receiver, trustee, administrator, custodian, administrative receiver or other similar official for it or for any substantial part of its Assets, and in the case of any such proceeding instituted against it (but not instituted by it), (a) such proceeding shall remain undismissed or unstayed for a period of 60 days, or (b) the Parent or its applicable Subsidiary, as applicable, fails to diligently and actively oppose such proceeding, or (c) any of the relief sought in such proceeding (including the entry of an order for relief against it or the appointment of a liquidator, receiver, trustee, custodian, administrator, administrative receiver or other similar official for it or for any substantial part of its Assets) is given; or (iv) takes any corporate or other action to authorize any of the above actions;

(9) if an encumbrancer shall take possession of all or a substantial part of the property of the Parent or any of its Subsidiaries (whether by appointment of a receiver, receiver and manager or otherwise) or if a distress or execution or any similar process be levied or enforced there against and remain unsatisfied for such period as would permit such property or such substantial part thereof to be sold thereunder;

(10) the occurrence of a Change of Control;

(11) the occurrence of a Material Adverse Change;

(12) any Material Contract is terminated by any party thereto in advance of its intended expiry or termination date or becomes unenforceable, in each case, the results of which would reasonably be expected to have a Material Adverse Change;

(13) any Material Authorization shall be revoked or not be renewed and not reinstated within 30 days of such occurrence, in each case, the results of which would reasonably be expected to have a Material Adverse Change; or

(14) any report of the auditors of the Parent in respect of the Financial Year end financials statements of the Parent (or such financial statements or notes thereto) contains a going-concern qualification or other qualification relating to the creditworthiness of the Parent on a consolidated basis;

(15) any of the Loan Documents (or any Lien granted thereunder) cease to be in full force and effect against the applicable Loan Party (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally) and if the applicable Loan Party does not, within 15 Business Days of receipt of written notice of such Loan Document (or such Lien granted thereunder) not being in full force and effect, cause such Loan Document (or such Lien granted thereunder) to be in full force and effect (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally) or replace such Loan Document (or Lien granted thereunder) with a new agreement (or new Lien) that is in form and substance satisfactory to the Majority Lenders acting reasonably; or

(16) the validity of any of the Loan Documents or the applicability thereof to the Accommodations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Parent or any of the other Loan Parties;

then, the Agent shall, at the request of the Majority Lenders, by written notice to the Parent (i) terminate the Lenders' obligations to make further Accommodations under the Credit Facility; (ii) (at the same time or at any time after such termination) declare the principal amount of all outstanding Advances, an amount equal to the Face Amount of each Banker's Acceptance, purchased Draft and issued Letters of Credit and all interest and Fees accrued thereon and all other amounts payable under this Agreement in respect of the Credit Facility and all other Secured Obligations (except for those arising pursuant to the Eligible Hedging Agreements and Other Secured Obligations) to be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Parent and the Borrowers to the extent permitted by applicable Law, and/or (iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law; provided, that upon the occurrence of an Event of Default under Section 10.01(8), the obligation of each Lender to make any Accommodation shall automatically terminate, the principal amount of all outstanding Advances, an amount equal to the Face Amount of each Banker's Acceptance, purchased Draft and issued Letters of Credit and all interest and Fees accrued thereon and all other amounts payable under this Agreement in respect of the Credit Facility and all other Secured Obligations shall be immediately due and payable, without presentment, demand, protest or further notice of any kind.

#### **Section 10.02. Remedies Upon Demand and Default.**

(1) Upon a declaration that the principal amount of all outstanding Advances, an amount equal to the Face Amount of each Banker's Acceptance, purchased Draft and issued Letters of Credit and all interest and Fees accrued thereon and all other amounts payable under this Agreement are immediately due and payable pursuant to Section 10.01 (or such obligations otherwise becoming immediately due and payable as provided in Section 10.01), all other Secured Obligations (except for those arising pursuant to the Eligible Hedging Agreements and Other Secured Obligations) shall be immediately due and payable and the Agent shall, at the request of the Majority Lenders, commence such legal action or proceedings as may be deemed expedient, including the commencement of enforcement proceedings under the Loan Documents or any other security granted by the Loan Parties or any other Person in connection with the Credit Facility to the Agent, all without any additional notice, presentation, demand, protest, notice of dishonour, entering into of possession of any of the Assets, or any other action or notice, all of which the Parent and the Borrowers hereby expressly waive to the extent permitted by applicable Law.

(2) The rights and remedies of the Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are in addition to and not in substitution for any other rights or remedies. Nothing contained herein or in the Loan Documents or any other security hereafter held by the Agent and the Lenders with respect to the indebtedness or liability of the Loan Parties or any other Person to the Agent and the Lenders or any part thereof, nor any act or omission of the Agent and the Lenders with respect to the Loan Documents, the Collateral or such other security, shall in any way prejudice or affect the rights, remedies and powers of the Agent and the Lenders hereunder or under the Loan Documents.

#### **Section 10.03. Application of Funds.**

(1) After the exercise of remedies provided for in Section 10.02 (or after the Accommodations and other amounts have automatically become immediately due and payable pursuant to Section 10.01), including in any bankruptcy or insolvency proceeding, any amounts received on account of the Secured Obligations shall be applied by the Agent in the following order (subject, in the case of amounts owing to a Defaulting Lender, to Section 2.12(1)(ii)):

First, to payment of that portion of the Secured Obligations constituting indemnities and expenses (other than principal and interest and Fees, but including fees of counsel and other advisors engaged by the Agent) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting Fees (other than principal and interest) payable to the Lenders, rateably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest (including, but not limited to, default interest and interest payable before and after the commencement of any insolvency or bankruptcy proceeding) on the Accommodations, rateably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Accommodations (including an amount necessary to Cash Collateralize the undrawn Face Amount of any Letter of Credit), the Swap Termination Value under Eligible Hedging Agreements and all Other Secured Obligations, rateably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Secured Obligations of the Loan Parties that are due and payable to the Agent and the other Secured Parties on such date, rateably among the Secured Parties in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full (other than contingent indemnification obligations not then due), to the Parent or as otherwise required by Law;

provided, however, that proceeds of any Collateral shall only be applied to the Secured Obligations secured by such Collateral as specified in the applicable Loan Document.

(2) Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth 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 other Secured Obligations, if any, in the order set forth above and, if no Secured Obligations remain outstanding, to the Parent or as otherwise required by Law.

## **ARTICLE 11 YIELD PROTECTION**

### **Section 11.01. Increased Costs.**

(1) **Increased Costs Generally.** If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Accommodations made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 11.02 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or

(c) impose on any Lender or any applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Accommodations made by such Lender,

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Accommodation (or of maintaining its obligation to make any such Accommodation), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender the applicable Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(2) **Capital/Liquidity Requirements.** If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or liquidity or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Accommodations made by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the applicable Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(3) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section ("**Additional Compensation**"), including a description of the event by reason of which it believes it is entitled to such compensation, and supplying reasonable supporting evidence (including, in the event of a Change in Law, a photocopy of the applicable Law evidencing such change) and reasonable detail of the basis of calculation of the amount or amounts, and delivered to the applicable Borrower shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof. In the event the Lender subsequently recovers all or part of the Additional Compensation paid by the applicable Borrower, it shall promptly repay an equal amount to the applicable Borrower. The obligation to pay such Additional Compensation for subsequent periods will continue until the earlier of termination of the Accommodation or the Commitment affected by the Change in Law, change in capital requirement or the lapse or cessation of the Change in Law giving rise to the initial Additional Compensation. A Lender shall make reasonable efforts to limit the incidence of any such Additional Compensation and seek recovery for the account of the applicable Borrower upon the applicable Borrower's request at the applicable Borrower's expense, provided such Lender in its reasonable determination suffers no appreciable economic, legal, regulatory or other disadvantage. Notwithstanding the foregoing provisions, a Lender shall only be entitled to rely upon the provisions of this Section 11.01 if and for so long as it is not treating the applicable Borrower in any materially different or in any less favourable manner than is applicable to any other customers of such Lender, where such other customers are bound by similar provisions to the foregoing provisions of this Section 11.01.



(4) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the applicable Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the applicable Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 11.02. Taxes.**

(1) **Payments Subject to Taxes.** Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes except as required by applicable Law; provided that if any Loan Party, the Agent or any Lender is required by applicable Law (as determined in the good faith discretion of the applicable withholding agent) to deduct or withhold any Taxes in respect of any payment by or on account of any obligation of a Loan Party hereunder or under any other Loan Document, then (i) if such Tax is an Indemnified Tax (including any Other Taxes), the sum payable shall be increased by such Loan Party when payable as necessary so that after making or allowing for all required deductions and payments for Indemnified Taxes (which excludes, for the avoidance of doubt, Excluded Taxes) (including deductions and withholdings of Indemnified Taxes applicable to additional sums payable under this Section) the Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments for Indemnified Taxes (which excludes, for the avoidance of doubt, Excluded Taxes) been required, (ii) such Loan Party shall make any such deductions required to be made by it under applicable Law (as determined in the good faith discretion of the applicable withholding agent), and (iii) such Loan Party shall timely pay the full amount required to be deducted to the relevant Governmental Entity in accordance with applicable Law.

(2) **Payment of Other Taxes by the Borrowers.** Without limiting the provisions of paragraph (1) above, each Loan Party shall timely pay any Other Taxes to the relevant Governmental Entity in accordance with applicable Law.

(3) **Indemnification by the Borrowers.** The Borrowers shall indemnify the Agent and each Lender, within 15 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes in respect of any payments by or on account of any obligation of a Loan Party hereunder or under any Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender in respect of any payment by or on account of any obligation of a Loan Party hereunder or under any other Loan Document and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Entity. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(4) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Entity, such Loan Party shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Entity evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(5) **Status of Lenders.** Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrowers (with a copy to the Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrowers or the Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrowers or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to withholding or information reporting requirements provided, however, that notwithstanding any of the foregoing in this Section 11.02(5), no Lender shall be required to provide any documentation or information of any kind which it is not permitted to provide under applicable Law. Without limiting the generality of the foregoing, any Lender shall deliver to the Borrowers (with a copy to the Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrowers or the Agent: (i) in the case of a Lender that is a "U.S. person" as defined under Section 7701(a)(30) of the Code, an IRS Form W-9 certifying that such Lender is not subject to U.S. federal backup withholding tax, and (ii) in the case of a Lender that is not a "U.S. person" as defined under Section 7701(a)(30) of the Code, an IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-8ECI, IRS Form W-8IMY (including all applicable attachments) and, in the case of a Lender claiming the "portfolio interest exemption" from U.S. federal withholding tax, a certificate to the effect that such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to any Borrower as described in Section 881(c)(3)(C) of the Code along with its executed copies of IRS Form W-8BEN or IRS Form W 8BEN-E.

(6) **Treatment of Certain Refunds and Tax Reductions.** If the Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which a Loan Party has paid additional amounts pursuant to this Section 11.02, it shall pay to the applicable Borrower or Guarantor, as applicable, an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Entity with respect to such refund). A Loan Party, upon the request of the Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Entity) to the Agent or such Lender if the Agent or such Lender is required to repay such refund to such Governmental Entity. Notwithstanding anything to the contrary in this paragraph, in no event will the Agent or a Lender be required to pay over any amount to a Loan Party pursuant to this Section 11.02(6), the payment of which would place the Agent or such Lender, as the case may be, in a less favourable net after-Tax position than the Agent or such Lender, as the case may be, would have been if the indemnification payments or additional amounts giving rise to such refund had never been paid, deducted or withheld. This paragraph shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Loan Parties or any other Person, to arrange its affairs in any particular manner or to claim any available refund.

(7) If a payment made to a Lender 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 Borrowers and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Agent such documentation prescribed by applicable Law and such additional documentation reasonably requested by the Borrowers or the Agent as may be necessary for the Borrowers and the 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, if any, to deduct and withhold from such payment under FATCA. For the avoidance of doubt, FATCA shall include any amendments to FATCA made after the Closing Date.

(8) Each Lender shall indemnify the Agent within 10 days after demand therefor, for the full amount of any Excluded Taxes attributable to and properly payable by such Lender that are payable or paid by the Agent, and reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Entity. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document against any amount due to the Agent under this paragraph (8). The agreements in this paragraph (8) shall survive the resignation and/or replacement of the Agent.

#### **Section 11.03. Mitigation Obligations: Replacement of Lenders.**

(1) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 11.01, or requires the Borrowers to pay any Indemnified Taxes, including Other Taxes, or any additional amount to any Lender or any Governmental Entity for the account of any Lender pursuant to Section 11.02, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Accommodations hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender (with the prior consent of the Borrowers), such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 11.01 or Section 11.02, 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 Borrowers hereby agree to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) **Replacement of Lenders.** If any Lender requests compensation under Section 11.01, if a Borrower is required to pay any Indemnified Taxes, including Other Taxes, or any additional amount to any Lender or any Governmental Entity for the account of any Lender pursuant to Section 11.02 or if any Lender's obligations are suspended pursuant to Section 11.04, then the Borrowers may either, at their sole expense and effort, upon 10 days' notice to such Lender and the Agent: (i) repay all outstanding amounts due to such affected Lender (or such portion which has not been acquired pursuant to clause (ii) below) and thereupon such Commitment of the affected Lender shall be permanently cancelled and the aggregate Commitment shall be permanently reduced by the same amount and the Commitment of each of the other Lenders shall remain the same; or (ii) require such Lender to assign, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, ARTICLE 18), all of its interests, rights and obligations under this Agreement and the related Loan Documents (other than Eligible Hedging Agreements and Other Secured Agreements) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrowers pay the Agent the assignment fee specified in Section 18.01(2)(f);
- (b) the assigning Lender receives payment of an amount equal to the outstanding principal of its Accommodations Outstanding and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) (other than Eligible Hedging Agreements and Other Secured Agreements) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 11.01 or payments required to be made pursuant to Section 11.02, such assignment will result in a reduction in such compensation or payments thereafter; and
- (d) such assignment does not conflict with applicable Law.

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 Borrowers to require such assignment and delegation cease to apply.

**Section 11.04. Illegality.**

If any Lender determines that any applicable Law has made it unlawful, or that any Governmental Entity has asserted that it is unlawful, for any Lender or its applicable lending office to make or maintain any Accommodations, or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Parent through the Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Agent and the Parent that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Accommodations, or take any necessary steps with respect to any Letters of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

**ARTICLE 12  
RIGHT OF SETOFF**

**Section 12.01. Right of Setoff.**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time 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 such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any Guarantor against any and all of the obligations of the Borrowers or any Guarantor now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or applicable Guarantor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that if any Defaulting Lender exercises any such right of set-off, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.12(1)(ii) 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 Agent, each Fronting Letter of Credit Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of set-off. The rights of each of the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Parent and the Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 12.01, it shall share the benefit received in accordance with Section 13.01 as if the benefit had been received by the Lender of which it is an Affiliate.

**ARTICLE 13**  
**SHARING OF PAYMENTS BY LENDERS**

**Section 13.01. Sharing of Payments by Lenders.**

If any Lender, by exercising any right of setoff as permitted by ARTICLE 12, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Accommodations and accrued interest thereon or other obligations hereunder greater than its pro rata share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Accommodations Outstanding 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 rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Accommodations Outstanding and other amounts owing them, provided that:

(1) 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,

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrowers or applicable Guarantor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Accommodations or participations in disbursements under Letters of Credit to any assignee or participant, other than to the Borrowers or any Guarantor or any Affiliate of the Borrowers or any Guarantor (as to which the provisions of this Section shall apply); and

(3) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Parent or any of its Subsidiaries to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to the Borrowers or any Guarantor upon the termination of derivatives entered into between the Borrowers or any Guarantor and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Borrowers and each Guarantor consents to the foregoing and agree, to the extent they may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers and each Guarantor rights of setoff with respect to such participation in accordance with ARTICLE 12 as fully as if such Lender were a direct creditor of the Borrowers and each Guarantor in the amount of such participation.

**ARTICLE 14**  
**AGENT'S CLAWBACK**

**Section 14.01. Agent's Clawback.**

(1) **Funding by Lenders; Presumption by Agent.** Unless the Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Agent such Lender's share of such advance, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may (but shall not be obligated to), in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Agent, then the applicable Lender shall pay to the 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 applicable Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Accommodation included in such advance. If the Lender does not do so forthwith, the applicable Borrower shall pay to the Agent forthwith on written demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any such payment by the applicable Borrower shall be without prejudice to any claim the applicable Borrower may have against a Lender that has failed to make such payment to the Agent.

(2) **Payments by Borrowers; Presumptions by Agent.** Unless the Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Agent for the account of any Lender hereunder that the applicable Borrower will not make such payment, the Agent may assume that the applicable Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the applicable Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.

**ARTICLE 15**  
**AGENCY**

**Section 15.01. Appointment and Authority.**

Each of the Lenders hereby irrevocably appoints Royal Bank of Canada (together with its successors and permitted assigns in accordance with the terms of this Agreement) hereunder to act on its behalf as the Agent hereunder and under the other Loan Documents (other than Eligible Hedging Agreements and Other Secured Agreements) and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Without limiting the foregoing, each of the Lenders authorizes the Agent to (x) enter into, on its own behalf and on behalf of each Lender, a subordination agreement in respect of Subordinated Debt; and (y) release any Guarantor from its respective guarantee and Security in accordance with the terms hereof or thereof or in order to give effect to the provisions of this Agreement, including a Disposition permitted hereunder (in each case, in whole or in part as may be necessary in the circumstance). The provisions of this Article (other than Section 15.07) are solely for the benefit of the Agent and the Lenders, and neither the Borrowers nor any Guarantor shall have rights as a third party beneficiary of any of such provisions, except in respect of this Section 15.01. In addition to the foregoing, the Agent shall provide and/or deliver such "know your client", anti-money laundering or similar information in respect of the Loan Parties as may be reasonably requested by a Lender and that is in the possession of the Agent.

**Section 15.02. Rights as a Lender.**

The Person serving as the 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 Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any the Parent or any of its Subsidiaries or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

**Section 15.03. Exculpatory Provisions.**

(1) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) 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 Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) 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 Parent or any of its Subsidiaries or any of the Parent's Affiliates that is communicated to or obtained by the person serving as the Agent or any of its Affiliates in any capacity.

(2) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Agent by the Parent or a Lender.



(3) Except as otherwise expressly specified in this Agreement, the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

#### **Section 15.04. Reliance by Agent.**

The 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 posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The 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 an Accommodation that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Accommodation or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **Section 15.05. Indemnification of Agent.**

Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Loan Parties), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct.

#### **Section 15.06. Delegation of Duties.**

The 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 Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The 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 provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

**Section 15.07. Replacement of Agent.**

(1) The Agent may at any time give notice of its resignation to the Lenders and the Parent. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, with the prior consent of the Parent, to appoint a successor, which shall be a Lender and having an office in Toronto, Ontario or an Affiliate of any such Lender with an office in Toronto. The Agent may also be removed at any time by the Majority Lenders upon 30 days' notice to the Agent and the Parent as long as the Majority Lenders, with the prior consent of the Parent, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having an office in Toronto, or an Affiliate of any such Lender with an office in Toronto.

(2) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications specified in Section 15.07(1); provided that if the Agent shall notify the Parent and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring 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 Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph) other than as a result of such former Agent's gross negligence or willful misconduct. The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the termination of the service of the former Agent, the provisions of this ARTICLE 15 and of ARTICLE 17 shall continue in effect for the benefit of such former 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 former Agent was acting as Agent.

**Section 15.08. Non-Reliance on Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the 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 Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the 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 Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 15.09. Collective Action of the Lenders.**

Each of the Lenders hereby acknowledges that to the extent permitted by applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders (including the Hedge Lenders and Service Lenders) collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

**Section 15.10. Anti-Money Laundering Legislation.**

(a) Each of the Parent and the Borrowers acknowledges that, pursuant to (i) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Currency and Foreign Transactions Reporting Act of 1970* (31 U.S.C. 5311 et. seq., (the *Bank Secrecy Act*)) (United States), as amended by Title III of the Patriot Act, (ii) the *Trading with the Enemy Act* (United States), as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto (United States), (iii) *Executive Order No. 13224 on Terrorist Financing*, effective September 24, 2001 (66 Fed. Reg. 49079) (United States) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” or “know your customer” Laws, whether within Canada, the United States or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agent may be required to obtain, verify and record information regarding each Loan Party, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby, including, without limitation, a Beneficial Ownership Certification in relation to any of Parent or any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation. The Parent shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assign or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Agent has ascertained the identity of the Loan Parties or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Agent:

- (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
- (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

**Section 15.11. No Other Duties, etc.**

Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

**Section 15.12. Erroneous Payments By The Agent**

(1) If the Agent notifies a Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party (any such Lender, other Secured Party or other recipient, a “**Payment Recipient**”) that the Agent has determined in its sole reasonable discretion that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Payment Recipient shall promptly, but in no event later than one Business Day thereafter, return to the Agent, in same day funds (in the currency so received), the amount of any such Erroneous Payment (or portion thereof), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent (i) in respect of an Erroneous Payment in U.S. Dollars, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect, or (ii) in respect of an Erroneous Payment in Canadian Dollars, at a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect. To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of the Agent to any Payment Recipient under this Section 15.12(1) shall be conclusive, absent manifest error.

(2) Without limiting immediately preceding Section 15.12(1), each Payment Recipient hereby further agrees that if it receives an Erroneous Payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Erroneous Payment (the “**Payment Notice**”), or (y) that was not preceded or accompanied by a Payment Notice sent by the Agent (or any of its Affiliates), then, said Payment Recipient shall be on notice, in each case, that an error has been made with respect to such Erroneous Payment. Each Payment Recipient agrees that, in each such case, or if it otherwise becomes aware an Erroneous Payment (or portion thereof) may have been sent in error, such Payment Recipient shall promptly notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent (i) in respect of an Erroneous Payment in U.S. Dollars, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect, or (ii) in respect of an Erroneous Payment in Canadian Dollars, at a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect.

(3) Each Payment Recipient hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Agent to such Payment Recipient from any source, against any amount due to the Agent under any of the immediately preceding Sections 15.12(1) or 15.12(2) or under the indemnification provisions of this Agreement.

(4) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), the Borrower and each other Loan Party hereby agrees that (x) the Agent shall be subrogated to all the rights of such Payment Recipient with respect to such amount (including, without limitation, the right to sell and assign the Advances (or any portion thereof), which were subject to the Erroneous Payment Return Deficiency) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment. For the avoidance of doubt, no assignment of an Erroneous Payment Deficiency will reduce the Commitments of any Payment Recipient and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold an Advance (or portion thereof) acquired pursuant to the assignment of an Erroneous Payment Deficiency, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Payment Recipient under the Loan Documents with respect to each Erroneous Payment Return Deficiency.

(5) Each party's obligations, agreements and waivers under this Section 15.12 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Loan Document.

**ARTICLE 16**  
**NOTICES: EFFECTIVENESS; ELECTRONIC COMMUNICATION**

**Section 16.01. Notices, etc.**

(1) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as-provided in paragraph (2) 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 fax to the addresses or fax numbers set out opposite the applicable name in the execution pages of this Agreement or, if to a Lender, to it at its address or fax number specified in the Register or, if to a Loan Party other than the Parent, in care of any of the Parent. Any notice that is provided to the Parent by the Agent or a Lender shall be deemed to have been provided to all Loan Parties for purposes of this Agreement and the other Loan Documents. Any notice or other reporting obligation (other than an Accommodation Notice) that is required to be provided by, or otherwise may be provide by, one or more of the Loan Parties under this Agreement or any other Loan Documents may be provided by the Parent (and when so provided shall be binding on all of the Loan Parties).

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 telecopier shall be deemed to have been given when sent (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (2) below, shall be effective as provided in said paragraph (2).

(2) **Electronic Communications.** Notices and other communications to the Loan Parties and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites and any E-System) pursuant to procedures approved by the Agent and the Loan Parties. The Agent or the applicable Loan Party may, in their 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.

(3) **Change of Address, Etc.** Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto.

**ARTICLE 17**  
**EXPENSES; INDEMNITY; DAMAGE WAIVER**

**Section 17.01. Expenses; Indemnity: Damage Waiver.**

(1) **Costs and Expenses.** The Parent shall pay or cause the Borrowers to pay (i) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Agent or any Lender including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Accommodations issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Accommodations.

(2) **Indemnification by the Parent and the Borrower.** The Parent and the Borrowers shall indemnify the Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee 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 Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Accommodation or the use or proposed use of the proceeds therefrom (including any refusal by the Fronting Letter of Credit Lender to honour 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 on or from any property owned, leased, used or operated by the Parent or any of its Subsidiaries, or any Environmental Liabilities related in any way to the Parent or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Loan Party and regardless of whether any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, 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 the gross negligence or wilful misconduct of such Indemnatee or from disputes amongst Indemnitees or (y) result from a claim brought by the Parent or any other Loan Party against an Indemnatee for breach of such Indemnatee's obligations hereunder or under any other Loan Document, if the Loan Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of Taxes other than Taxes that represent losses or damages arising from any non-Tax claim or matters specifically addressed in Section 11.02 and Section 17.01(1).

(3) **Reimbursement by Lenders.** To the extent that the Parent or the Borrowers for any reason fail to indefeasibly pay any amount required under paragraph (1) or (2) of this Section to be paid by it to the Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided 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 Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this paragraph (3) are subject to the other provisions of this Agreement concerning several liability of the Lenders.

(4) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable Law, the Borrowers and the Guarantors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Accommodation or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages have resulted from the gross negligence or wilful misconduct of such Indemnitee as determined by a court of competent jurisdiction by final and non-appealable judgment.

(5) **Payments.** All amounts due under this Section shall be payable promptly after demand therefor with documented particulars thereof. A certificate of the Agent or a Lender setting forth the amount or amounts owing to the Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Parent shall be conclusive absent manifest error.



**ARTICLE 18**  
**SUCCESSORS AND ASSIGNS**

**Section 18.01. Successors and Assigns.**

(1) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby except that neither the Parent, the Borrowers nor any Guarantor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender. No Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (2) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (4) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (6) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (4) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(2) **Assignments by Lenders.** Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Accommodations Outstanding at the time owing to it); provided that:

(a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Accommodations Outstanding at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Accommodations Outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Accommodations Outstanding 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 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 Agent and, so long as no Event of Default has occurred and is continuing, the Parent otherwise consents to a lower amount;

(b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Accommodations Outstanding or the Commitment assigned, except that this clause (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-pro rata basis;

(c) any assignment of a Commitment must be approved by the Fronting Letter of Credit Lenders and the Swingline Lender (such approval not to be unreasonably withheld, conditioned or delayed) unless the Person that is the proposed assignee is itself already a Lender (other than a Defaulting Lender);

(d) except if any Event of Default has occurred and is continuing, any assignment must be approved by the Agent (such approval not to be unreasonably withheld, conditioned or delayed) unless:

(i) the proposed assignee is itself already a Lender; or

- (ii) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's, S&P and DBRS, respectively;

(e) any assignment must be approved by the Parent (such approval not to be unreasonably withheld or delayed) unless (i) the proposed assignee is itself an Affiliate of such assigning Lender or an Approved Fund; or (ii) if an Event of Default under Section 10.01(1), Section 10.01(2), Section 10.01(4)(ii), Section 10.01(8) or Section 10.01(9) has occurred and is continuing;

(f) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of Cdn.\$3,500 payable by the Eligible Assignee (unless such assignment is from a Lender to an Affiliate or Approved Fund thereof) and such Eligible Assignee, if it shall not be a Lender, shall deliver to the Agent an administrative questionnaire satisfactory to the Agent; and

(g) 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 Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Parent and the Agent, the applicable pro-rata share of Accommodations previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (1) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, each Fronting Letter of Credit Lender and each other Lender hereunder (and interest accrued thereon), and (2) acquire (and fund as appropriate) its full pro rata share of all Accommodations and participations in Letters of Credit in accordance with the percentage equivalent of the ratio which such Defaulting Lender's portion of the Commitment bears to the aggregate amount of the Commitment. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to clause (d) of this paragraph 2, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement with respect to the interest assigned and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of ARTICLE 11 and ARTICLE 17, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed to by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrowers or a new Accommodations to the Borrowers.

Notwithstanding any other provision of this Agreement, the Agent shall have no responsibility for monitoring any assignments or participations to Ineligible Transferees. The list of all Ineligible Transferees shall be made available to all Lenders.

(3) **Register.** The Agent shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Accommodations Outstanding owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, 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.

Each Lender that sells a participation shall, acting solely for this purpose and as 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 Accommodations Outstanding or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(4) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Parent or the Agent, sell participations to any Person (other than a natural person, a Loan Party, any Affiliate of a Loan Party, a Defaulting Lender or an Ineligible Transferee) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Accommodations Outstanding owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Parent, the Borrowers, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrowers or a new Loan to the Borrowers.

Subject to paragraph (5) of this Section, the Parent and each Borrower agrees that to the extent permitted by Law, each Participant shall be entitled to the benefits of ARTICLE 12 as though it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section, provided such Participant agrees to be subject to ARTICLE 13 as though it were a Lender.

(5) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 11.01 and Section 11.02 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Parent's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of ARTICLE 11.

(6) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but 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.

## **ARTICLE 19 AMENDMENTS AND WAIVERS**

### **Section 19.01. Amendments and Waivers**

(1) Subject to subsections (2), (3) and (5), no acceptance, amendment or waiver of any provision of any of the Loan Documents, nor consent to any departure by the Loan Parties or any other Person from such provisions, shall be effective unless in writing and approved by the Majority Lenders. Any acceptance, amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. Any consent or acknowledgement provided by the Parent shall be binding on all Loan Parties.

(2) Subject to Section 2.12(1), only written acceptances, amendments, waivers or consents signed by (i) all of the Lenders shall increase the Commitment (other than as contemplated by Section 2.14) (and any increase of any Lender's Commitment shall require the consent of such Lender); (ii) each Lender to whom such reduction shall apply, shall reduce the principal or amount of, or interest on, directly, any Accommodations Outstanding or any Fees (provided that, for greater certainty, the Majority Lenders may amend the definition of Total Funded Debt to Adjusted EBITDA Ratio or any of its constituent parts notwithstanding any effect on the Applicable Margin); (iii) each Lender to whom such postponement shall apply, shall postpone any date fixed for any payment of principal of, or interest on, any Accommodations Outstanding or any Fees; (iv) all of the Lenders shall change the percentage of the Commitments or the number or percentage of Lenders required for the Lenders, or any of them, or the Agent to take any action; (v) all of the Lenders shall permit any termination of any of the guarantees required hereunder or the Security or release any of the guarantees or all or substantially all of the Assets subject to the Security (except as contemplated by this Agreement or the other Loan Documents); (vi) all of the Lenders shall change the definition of Majority Lenders; (vii) all of the Lenders shall amend Section 10.03; or (viii) all of the Lenders shall amend this Section 19.01(2).

(3) Only written acceptances, amendments, waivers or consents signed by the Agent, in addition to the Majority Lenders, shall affect the rights or duties of the Agent in such capacity under the Loan Documents. Only written acceptances, amendments, waivers or consents signed by a Fronting Letter of Credit Lender shall affect the rights or duties of such Fronting Letter of Credit Lender in such capacity under the Loan Documents. Only written acceptances, amendments, waivers or consents signed by the Swingline Lender shall affect the rights or duties of the Swingline Lender in such capacity under the Loan Documents.

(4) Anything in this Agreement to the contrary notwithstanding, no waiver, amendment or modification of any provision of this Agreement that has the effect (either immediately or at some later time, or directly or indirectly) of enabling the Loan Parties to satisfy a condition precedent to the making of any Accommodation that represents an increase in the Accommodations Outstanding shall be effective against the Lenders only if the Majority Lenders have concurred with such waiver, amendment or modification.

(5) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Agent and the Borrower may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Agent deems appropriate in order to implement any Benchmark Replacement or any Benchmark Replacement Conforming Change or otherwise effectuate the terms of Section 3.06 in accordance with the terms thereof.

#### **Section 19.02. Judgment Currency.**

(1) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to a Lender in any currency (the “**Original Currency**”) into another currency (the “**Other Currency**”), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Lender could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by applicable Law, on the day on which the judgment is paid or satisfied.

(2) The obligations of the Loan Parties in respect of any sum due in the Original Currency from it to any Lender under any of the Loan Documents shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in the Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the Loan Parties agree, as a separate obligation and notwithstanding the judgment, to indemnify the Lender, against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender shall remit such excess to the Parent.

**ARTICLE 20**  
**GOVERNING LAW; JURISDICTION; ETC.**

**Section 20.01. Governing Law; Jurisdiction; Etc.**

(1) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

(2) **Submission to Jurisdiction.** The Parent, the Borrowers and each Guarantor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this 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 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 Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against a Loan Party or its properties in the courts of any jurisdiction.

(3) **Waiver of Venue.** The Parent, the Borrowers and each Guarantor 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 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 defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(4) **USA Patriot Act Notice.** Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended from time to time, the “Patriot Act”), and the Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and the Agent are 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 identifying information in the event this information is insufficient to complete verification) that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

**ARTICLE 21**  
**WAIVER OF JURY TRIAL**

**Section 21.01. 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 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 (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 AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

ARTICLE 22

COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION

Section 22.01. Counterparts; Integration; Effectiveness; Electronic Execution.

(1) **Counterparts; Integration; Effectiveness.** This Agreement and each other Loan Document may be executed in one or more counterparts (and by different parties hereto or thereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by fax or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. This Agreement shall become effective when it has been executed by the Agent and when the Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

(2) **Electronic Execution.** The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement or any other Loan Document 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, without limitation, as in provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario), the *Electronic Commerce Act* (Nova Scotia), the *Electronic Transaction Acts* (British Columbia), the *Electronic Transactions Act* (Alberta), or any other similar laws based on the *Uniform Electronic Commerce Act* of the *Uniform Law Conference of Canada*. The Agent may, in its discretion, require that any such documents and signatures executed electronically or delivered by fax or other electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature executed electronically or delivered by fax or other electronic transmission.

**ARTICLE 23**  
**TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY**

**Section 23.01. Treatment of Certain Information: Confidentiality; Non-Public Information.**

(1) Each of the Agent and the Lenders shall maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (to the extent necessary to administer or enforce this Agreement and the other Loan Documents) (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, with the applicable Agent or Lender being responsible for such Person's compliance with this Section), (b) to the extent requested by any regulatory authority having jurisdiction over it (including any self-regulatory authority), (c) to the extent required by applicable Laws or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Parent and its obligations, (g) with the consent of the Parent or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section by such Person or actually known to such Person or (y) becomes available to, or has been made available to, the Agent or any Lender on a non-confidential basis from a source other than any Loan Party, and (z) for the avoidance of doubt, by Agent to any Secured Party. If the Agent or any Lender is requested or required to disclose any Information (other than to any bank or other regulatory examiner) pursuant to or as required by applicable Laws or by a subpoena or similar legal process, the Agent or such Lender, as applicable, shall use its reasonable commercial efforts to provide the Parent with notice of such requests or obligation in sufficient time so that the Parent may seek an appropriate protective order or waive the Agent's, or such Lender's, as applicable, compliance with the provisions of this Section, and the Agent and such Lender, as applicable, shall, to the extent reasonable, co-operate with the Parent in the Parent obtaining any such protective order.

(2) For purposes of this Section, "**Information**" means all information received from any Loan Party relating to the Parent or any of its Subsidiaries or any of their respective businesses. 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. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.



(3) In addition, and notwithstanding anything herein to the contrary, the Agent may provide basic information concerning the Parent, the Borrowers and the Guarantors and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

(4) MNPI. Parent and the Borrowers acknowledge and agree that (A) the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, the Loan Parties hereunder (collectively, the “**Borrower Materials**”) may be disseminated by, or on behalf of, Agent, and made available, to the Lenders by posting such Borrower Materials on an E-System; and (B) certain of the Lenders (each a “**Public Lender**”) may have personnel who do not wish to receive material non public information (“**MNPI**”) with respect to Parent and its Subsidiaries or any of their respective 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. The Loan Parties hereby agree that they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (A) identify in writing, and (B) to the extent reasonably practicable, clearly and conspicuously mark any Borrower Materials that is publicly available or that is not material for purposes of United States federal and state securities laws as “PUBLIC”. The Loan Parties agree that by identifying such Borrower Materials as “PUBLIC” or publicly filing such Information with the SEC, then Agent and the Lenders shall be entitled to treat such Borrower Materials as not containing any MNPI for purposes of United States federal and state securities laws. The Loan Parties further represent, warrant, acknowledge and agree that the following Information shall be deemed to be PUBLIC, whether or not so marked, and do not contain any MNPI: (I) the Loan Documents, including the schedules and exhibits attached thereto, and (II) administrative materials of a customary nature prepared by the Loan Parties or Agent (including any Accommodation Notice and any similar request or notice posted on or through an E-System). Before distribution of Borrower Materials, the Loan Parties agree to execute and deliver to Agent a letter authorizing distribution of the evaluation materials to prospective Lenders and their employees willing to receive MNPI, and a separate letter authorizing distribution of evaluation materials that do not contain MNPI and represent that no MNPI is contained therein. The Loan Parties acknowledge and agree that the list of Ineligible Transferees does not constitute MNPI and may be posted to all Lenders by Agent (including any updates or supplements thereto).

(5) Each of Agent and each Lender acknowledges and agrees that it may receive MNPI hereunder concerning the Loan Parties and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and applicable Laws (including United States federal and state securities laws and regulations). Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non public information with respect to the Parent or its securities for purposes of United States Federal or state securities laws.

**ARTICLE 24**

**ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS**

**Section 24.01. 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 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.

**[Remainder of this page left intentionally blank.]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective authorized officers as of the date first above written.

**TUCOWS INC.**, as Parent

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*

**TUCOWS.COM CO.,** as Canadian Borrower

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*

**TING INC.**, as U.S. Borrower

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*

**TUCOWS (DELAWARE) INC.**, as U.S. Borrower

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*

**TUCOWS (EMERALD), LLC**, as U.S. Borrower

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*

**WAVELO, INC.**, as U.S. Borrower

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

Address: 96 Mowat Avenue, Toronto ON M6K 3M1

Attention: Dave Singh, Chief Financial Officer

*Signature Page*

*Credit Agreement*



**ROYAL BANK OF CANADA**, as Agent

By: /s/ Helena Sadowski  
Name: Helena Sadowski  
Title: Manager, Agency

Address: 155 Wellington Street  
West, 8th Floor, Toronto,  
Ontario M5V 3K7

Attention: Manager Agency Services

Fax: (416) 842 -4023

*Signature Page*

*Credit Agreement*

**ROYAL BANK OF CANADA**, as Lender, Swingline Lender and Fronting  
Letter of Credit Lender

By: /s/ Brad Clarkson

Name: Brad Clarkson

Title: Director, Corporate Client Group, Mid-Market Leveraged and  
Infrastructure Finance

Address:

Attention:

Fax:

*Signature Page*

*Credit Agreement*

**BANK OF MONTREAL**, as Lender

By: /s/ Aditya Sapru  
Authorized Signing Officer  
Name: Aditya Sapru  
Title: Managing Director & Team Lead, Corporate Finance  
By: /s/ Daniel Pichini  
Authorized Signing Officer  
Name: Daniel Pichini  
Title: Director, Corporate Finance  
Address: daniel.pichini@bmo.com

Attention:

Fax:

*Signature Page*

*Credit Agreement*

**THE BANK OF NOVA SCOTIA**, as Lender

By: /s/ Mitch Gillingwater  
Authorized Signing Officer

By: /s/ Sebastian Reverado  
Authorized Signing Officer

Address: 40 King Street W, 14th Floor, Toronto ON, M5H 1H1

Attention: Mitch Gillingwater

Fax: n/a

*Signature Page*

*Credit Agreement*

**HSBC BANK CANADA**, as Lender

By: /s/ Graham Douglas  
Authorized Signing Officer

By: /s/ Jordan Stewart  
Authorized Signing Officer

Address: 16 York St, Toronto, ON M5J 03E

Attention: Graham Douglas

Fax: 416-350-1248

*Signature Page*

*Credit Agreement*

**CANADIAN IMPERIAL BANK OF COMMERCE, as Lender**

By: /s/ Mark McQueen  
Authorized Signing Officer  
Name: Mark McQueen  
Title: Executive Managing Director

By: /s/ Adam Weiers  
Authorized Signing Officer  
Name: Mark McQueen  
Title: Director  
Address: 81 Bay Street, 10th Floor  
Toronto, Ontario, M5J 0E7  
Attention: Adam Weiers

Fax: 416 682-1160

*Signature Page*

*Credit Agreement*

**THE TORONTO-DOMINION BANK**, as Lender

By: /s/ Justin Whiteside  
Authorized Signing Officer

By: /s/ Maurice Moffett  
Authorized Signing Officer

Address: 66 Wellington St W  
Toronto ON M5K 1A2  
Attention: Justin Whiteside  
Director, National Account

*Signature Page*

*Credit Agreement*

Acknowledged and agreed to as of the date first written above.

**ENOM, LLC, as Guarantor**

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

**TUCOWS DOMAINS INC., as Guarantor**

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

**ASCIO TECHNOLOGIES, CORP., as Guarantor**

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

**TUCOWS DOMAINS SERVICES, INC., as Guarantor**

By: /s/ Davinder Singh  
Name: Davinder Singh  
Title: Chief Financial Officer

*Signature Page*

*Credit Agreement*



**TING FIBER, LLC**  
**SERIES A PREFERRED UNIT PURCHASE AGREEMENT**

**August 8, 2022**

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TING FIBER, LLC

SERIES A PREFERRED UNIT PURCHASE AGREEMENT

THIS SERIES A PREFERRED UNIT PURCHASE AGREEMENT (this “**Agreement**”), is made as of August 8, 2022, by and among Ting Fiber, LLC, a Delaware limited liability company (the “**Company**”) and the investors listed on Exhibit A attached to this Agreement (each, a “**Purchaser**” and together, the “**Purchasers**”).

RECITALS

**WHEREAS**, subject to the terms and conditions set forth herein, the Company desires to issue and sell to each Purchaser, and each Purchaser desires to purchase from the Company (such issuances, sales and purchases as between the Company and each Purchaser, collectively, the “**Purchase and Sale Transaction**”), up to 10,000,000 newly issued Series A Preferred Units of the Company (having the rights and preferences set forth in the Amended LLC Agreement (as defined herein), the “**Series A Preferred Units**”); and

**WHEREAS**, in connection with the Purchase and Sale Transaction, that certain Limited Liability Company Agreement of the Company (as amended, the “**Existing LLC Agreement**”) will be amended and restated in its entirety by the Amended LLC Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Purchase and Sale of Series A Preferred Units.

1.1 Sale and Issuance of Series A Preferred Units. Subject to the terms and conditions of this Agreement, each Purchaser agrees to purchase at the Initial Closing (as defined herein), and the Company agrees to sell and issue to each Purchaser at the Initial Closing, the number of Series A Preferred Units set forth opposite such Purchaser’s name on Exhibit A attached hereto, at a cash purchase price of \$6.00 per Series A Preferred Unit. The Series A Preferred Units issued to the Purchasers pursuant to this Agreement (including any units issued at the Initial Closing and any Milestone Units, as defined below) shall be referred to in this Agreement as the “**Purchased Units**”.

1.2 Initial Closing; Delivery.

(a) The initial purchase and sale of the Purchased Units shall take place remotely via the exchange of documents and signatures on the date hereof, or at such other time and place as the Company and the Purchasers mutually agree upon, orally or in writing (which time and place are designated as the “**Initial Closing**”).

(b) At each of the Initial Closing and each Milestone Closing (as defined below) (each, a “**Closing**”) and subject to the terms and conditions of this Agreement, in consideration for the Purchased Units, each Purchaser shall pay to the Company the applicable purchase price as set forth on Exhibit A or in the Company Notice (as defined below), in each case, by wire transfer of immediately available funds to a bank account designated by the Company.

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1.3 Sale of Additional Preferred Units.

(a) Milestone Closings & Standby Fee.

(i) After the Initial Closing until August 8, 2025 (the “**End Date**”), within ten days following the delivery by the Company to Generate (as defined below) of an effective written notice (a “**Company Notice**”) that the Company has completed the milestones set forth on Exhibit D (the “**Milestones**”), the Company shall sell and issue to the Purchasers, and the Purchasers shall purchase from the Company up to an amount not to exceed the Milestone Amount (as defined below), that number of Series A Preferred Units (the “**Milestone Units**”) set forth in such Company Notice (each, a “**Milestone Closing**”) at the purchase price amount set forth in the Company Notice. The terms of and conditions precedent for each Milestone Closing shall be equivalent to those applicable to the Initial Closing (as set forth in this Agreement, except as such terms and conditions solely relate to the Initial Closing), including (but not limited to) the price per Purchased Unit and the conditions of such Purchaser’s obligation to consummate such Milestone Closing as contemplated by Article IV hereto. The Company may deliver a Company Notice not more than once during a calendar quarter during the period following the Initial Closing and ending on the End Date. In each Company Notice, the Company shall state whether the Milestones have been achieved and the achievement of such Milestones, with the consent of the Preferred Manager as noted in Section 1.3(a)(ii), shall trigger the applicable corresponding Milestone Closing.

(ii) Whether each Milestone has been achieved shall be determined in good faith by (i) the Board (as defined below) other than the Preferred Manager and (ii) the Preferred Manager. If there is a dispute between the Board (other than the Preferred Manager) and the Preferred Manager as to whether a Milestone has been achieved, the parties shall, for a period of 15 days (the “**Negotiation Period**”), negotiate in good faith. In the event the parties are not able to reach a resolution as to such dispute within the Negotiation Period, the Board (other than the Preferred Manager) and the Preferred Manager shall, within ten days following the end of the Negotiation Period, appoint an independent accounting firm of national reputation mutually acceptable to such parties (the “**Independent Expert**”) determine whether a Milestone has been achieved. Such Independent Expert shall deliver its determination to the parties within 30 days after its engagement. Such Independent Expert’s determination shall be final and binding on the parties. The costs of the engagement shall be borne by equally between the Company and the Purchasers.

(iii) At each Milestone Closing, the Purchasers shall deliver, or cause to be delivered, to the Company the applicable purchase price by wire transfer of immediately available funds to a bank account designated by the Company in the effective Company Notice.

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(iv) Notwithstanding anything in this Section 1.3 or in this Agreement, to the extent a consent, approval, order or authorization, including any consent, approval, order or authorization set forth on Section 2.6 of the Disclosure Schedule (each, a “**Specified Approval**”), is required in connection with a Milestone Closing, the time period for each of such Milestone Closing and the End Date shall be extended for such period of time until the Specified Approval is provided or obtained, as applicable; provided that in no event will the End Date be extended beyond the date that is six months following the original End Date.

(v) From the date of the Initial Closing until the earlier of: (w) the End Date, and (x) the date upon which the Milestone Amount has been paid to the Company pursuant to Milestone Closings (“**Standby Fee End Date**”), a standby fee (“**Standby Fee**”) shall accrue on the portion of the Milestone Amount which has not been paid by the Purchasers to the Company pursuant to Milestone Closings. The Standby Fee shall be calculated on a daily basis by multiplying (y) 0.50% by (z) the portion of the Milestone Amount which has not been paid by the Purchasers to the Company, and divided by 360. Provided that the Purchasers are not in breach of this Agreement or the Amended LLC Agreement, the Standby Fee shall accrue and be payable by the Company to the Purchasers pro rata in accordance with the Purchasers’ respective purchase commitments for the Milestone Amount at the Milestone Closings, as set forth on Exhibit A. The Standby Fee shall accrue and be payable quarterly in arrears on the last day of each fiscal quarter based on the number of days in such fiscal quarter (including the first day and excluding the last day in such fiscal quarter) and on the Standby Fee End Date.

(b) Supplement to Disclosure Schedule. Prior to a Milestone Closing, the Company shall have the right (but not the obligation) to supplement and amend the Disclosure Schedule (as defined below) delivered by the Company as of the Initial Closing (a “**Supplement**”) to reflect any matter occurring after the Initial Closing by delivering the Supplement to the Purchasers in advance of any such Closing. Any disclosure in a Supplement shall not be deemed to amend the Disclosure Schedule (as defined below) delivered pursuant to a prior Closing but shall update the Disclosure Schedule for purposes of any such subsequent Milestone Closing. A Supplement, if any, will be attached to the Disclosure Schedule as of the applicable Closing pursuant to which it is being delivered and shall update the Disclosure Schedule for purposes of this Agreement as of the date of such Closing.

1.4 Use of Proceeds. In accordance with the directions of the Company’s Board of Managers (the “**Board**”), the Company will use the proceeds from the Purchase and Sale Transaction for general corporate and working capital purposes in accordance with the budget approved by the Board in accordance with the Amended LLC Agreement, including but not limited to: (i) funding cash and working capital on the balance sheet of the Company; (ii) funding organic growth capital expenditure requirements associated with the Company’s network build plan; and (iii) funding the acquisition of assets or companies by the Company in line with the Company’s network build plan. Proceeds may not be used to fund dividends, special distributions, share repurchases or other payments to the members of the Company except in accordance with the Amended LLC Agreement.

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1.5 Defined Terms Used in this Agreement. In addition to the terms defined herein, the following terms used in this Agreement shall be construed to have the meanings set forth or referenced below:

(a) “**Affiliate**” of any particular Person means any other Person that, directly or indirectly, is Controlling, Controlled by or under common Control with such particular Person.

(b) “**Amended LLC Agreement**” means that certain Amended and Restated Limited Liability Company Agreement of the Company, by and among the Company and the members of the Company party thereto, in substantially the form attached hereto as Exhibit B.

(c) “**Anti-Corruption Laws**” means the U.S. Foreign Corrupt Practices Act of 1977, as amended, and similar legislation applicable to the Company and any Company Subsidiary.

(d) “**Asset**” of “**Assets**” means, with respect to any Person, all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the related goodwill, that are assets and properties are owned or leased by such Person.

(e) “**Code**” means the United States Internal Revenue Code of 1986, as amended from time to time, or any successor statute.

(f) “**Company Intellectual Property**” means, collectively (i) Company-Owned Intellectual Property, and (ii) Company-Licensed Intellectual Property.

(g) “**Company-Licensed Intellectual Property**” means Intellectual Property owned by a third party and used or held for use for the conduct of the Company’s business as now conducted and as presently proposed to be conducted.

(h) “**Company-Owned Intellectual Property**” means all Intellectual Property that is owned by or purported to be owned by the Company.

(i) “**Company Subsidiary**” means, with respect to the Company, any entity, including any corporation, partnership, trust, limited liability company or other non- corporate business enterprise, in which: (i) the Company, directly or indirectly (through another Company Subsidiary or otherwise), Controls, (ii) the Company (or another Company Subsidiary) holds securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are directly or indirectly owned by the Company; (iii) the Company (or another Company Subsidiary) holds securities or other ownership interests representing 50% or more of the voting power of all outstanding stock or ownership interests of such an entity; or (iv) the Company (or another Company Subsidiary) holds securities or other ownership interests representing the right to receive 50% or more of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity.

(j) “**Constituents of Concern**” shall mean any hazardous, acutely hazardous, or toxic substances or waste, pollutant or contaminant defined and regulated as such under Environmental Laws, as well as petroleum or any other fraction thereof.

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(k) “**Contract**” means any legally binding contract, lease, indenture, agreement or other commitment.

(l) “**Control**” including the terms “**Controlled**” and “**Controlling**” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise, including, with respect to a corporation, partnership or limited liability company, the direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

(m) “**Electronic Data Room**” means the electronic data room established by Tucows, Inc. in the folder named “2. Live Dataroom” on the Google Drive platform. References to documents or other materials “provided” or “made available” to the Purchasers or similar phrases shall mean that such documents or other materials were delivered to the Purchasers or its Representatives or were present in the Electronic Data Room at least one day prior to the date of this Agreement.

(n) “**Environmental Laws**” shall mean all foreign, federal, state, or local statutes, regulations, ordinances, codes, or decrees protecting the quality of the ambient air, soil, surface water or groundwater, in effect as of the date of this Agreement.

(o) “**Environmental Permits**” shall mean all permits, licenses, registrations, and other authorizations required under applicable Environmental Laws.

(p) “**Equity Security**” means (a) any share of stock, partnership or joint venture interest, membership interest, limited liability company interest, beneficial interest in a trust, or similar security or any other interest in the equity of any applicable Person; (b) any security, debt instrument, or other interest directly or indirectly convertible into or exercisable or exchangeable for (with or without consideration) any of the foregoing securities or other equity interests; and (c) any warrant, option or other right to subscribe to or purchase any of the foregoing securities or other equity interests (including convertible or exchangeable securities), in each case with respect to the applicable Person, as the context requires.

(q) “**ERISA Affiliate**” means any Person treated as a single employer with Tucows, Inc., the Company or any of their respective subsidiaries under Code §414 (including any corresponding Treasury Regulations).

(r) “**Ex-Im Laws**” means all laws and regulations applicable to the Company relating to export, re-export, transfer or import controls (including the Export Administration Regulations administered by the U.S. Department of Commerce, and customs and import Laws administered by U.S. Customs and Border Protection).

(s) “**Generate**” means Generate TF Holdings, LLC, a Delaware limited liability company.

(t) “**Governmental Authority**” means any foreign, federal, state, commonwealth or local governmental entity or municipality or subdivision thereof or other similar body exercising executive, legislative, judicial, taxing, regulatory or administrative authority or functions of or pertaining to government, or agency or any court, tribunal, or judicial or arbitral body (public or private).

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(u) **“Indebtedness”** of any Person means, without duplication, any and all liabilities and obligations, contingent or otherwise, of such Person (a) for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, or (b) evidenced by notes, bonds, debentures, mortgages or other debt instruments, debt securities or other similar instruments. For the purposes hereof, Indebtedness shall include any and all accrued interest, success fees, prepayment premiums, make-whole premiums or penalties, and fees, expenses and indemnities (including attorneys’ fees) associated with any such Indebtedness.

(v) **“Information Privacy and Security Requirements”** means all of the following to the extent relating to Personal Information or otherwise relating to privacy, security, or security breach notification requirements and applicable to the Company: (i) all applicable Laws concerning the use, processing, ownership, maintenance, storage, collection, privacy and/or security of Personal Information, (ii) the Company’s own rules, policies, and procedures, (iii) the Payment Card Industry Data Security Standard, if applicable, and (iv) contracts, agreements, and arrangements to which the Company is party or by which they or any of their assets are bound. Without limiting the foregoing, the term “Information Privacy and Security Requirements” includes, where applicable, the Health Insurance Portability and Accountability Act, the HITECH Act, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Children’s Online Privacy Protection Act, the EU General Data Protection Regulation, the California Consumer Protection Act, state data security Laws, state social security number protection Laws, state data breach notification Laws, state consumer protection Laws, and the equivalent of any of the foregoing in any relevant jurisdiction.

(w) **“Intellectual Property”** means all patents, patent applications, registered and unregistered trademarks, trademark applications, registered and unregistered service marks, service mark applications, trade names, copyrights, trade secrets, domain names, mask works, information and proprietary rights and processes, similar or other intellectual property rights.

(x) **“Key Employee”** means each of Elliot Noss, Davinder Singh, Jill Szuchmacher, Jessica Johansson, Bret Fausett, and Michael Goldstein.

(y) **“Knowledge”** including the phrases **“to the Knowledge of the Company,”** and **“to the Company’s Knowledge”** shall mean the actual knowledge after reasonable investigation of each Key Employee and assuming such knowledge as such persons would have as a result of the reasonable performance of his or her duties in the ordinary course.

(z) **“Laws”** means any domestic or foreign: federal, state, or local laws (statutory, common, or otherwise), statutes, constitutions, treaties, conventions, ordinances, acts, codes, rules, regulations, orders, determinations or other similar requirements enacted, adopted or promulgated by a Governmental Authority, in each case, as amended, unless expressly specified otherwise.

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(aa) **“Leased Real Property”** means the real property leased by the Company or any Company Subsidiary, in each case, as tenant, lessee or licensee, together with, to the extent leased by the Company or Company Subsidiary, all real property, rights to access or use, rights-of-way, licenses, easements, buildings and other structures, facilities or improvements located thereon.

(bb) **“Lien”** means any charge, lien, claim, encumbrance, pledge, security interest, mortgage, option, deed of trust, servitude or other similar restriction or covenant of any kind (other than, in the case of a security, any restriction on the transfer of such security arising solely under applicable Law). “Liens” do not include nonexclusive licenses granted by the Company to Company Intellectual Property in the ordinary course of business.

(cc) **“Material Adverse Effect”** means any fact, change, event or effect that has had, or would reasonably be expected to have, a material adverse effect on (a) the assets, liabilities, financial condition, or results of operations of the Company or the Company and the Company Subsidiaries, taken as a whole, excluding any fact, change, event or effect of the foregoing, arising out of or resulting from the following (none of which, either alone or in combination, shall be considered in determining whether a “Material Adverse Effect” has occurred): (i) events or occurrences generally affecting the industry in which the business is conducted; (ii) changes in conditions in the U.S. or global capital, financial, securities or credit markets generally (including any decline in the price of any security or any market index); (iii) changes in Law or generally acceptable accounting principles or the enforcement or authoritative interpretations thereof that occur after the date hereof; (iv) the announcement of or compliance with this Agreement or the Transactions; (v) the failure of the Company or any Company Subsidiary to meet any projections, forecasts or revenue or earning predictions for any period; (vi) acts of declared or undeclared war, national disaster, armed hostilities, sabotage or terrorism, or any escalation or worsening of the foregoing; (vii) any acts of God, including earthquakes, hurricanes or other natural disasters; and (viii) any epidemics, pandemics, disease outbreaks, or other public health emergencies (including SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemics or disease outbreaks); provided, that the effects described in clauses (i) through (iii) and (vi) through (viii) may be taken into account in determining whether a Material Adverse Effect has occurred if such effects have a disproportionately adverse effect on either the Company or the Company and the Company Subsidiaries, taken as a whole, relative to other Persons conducting business in the same or similar industries and (b) the ability of the Company to consummate the Transactions.

(dd) **“Milestone Amount”** means \$140,000,000.

(ee) **“Network JV”** means GT Network Holdings, LLC, a Delaware limited liability company, established to construct, operate, and maintain fiber-to-the-premises network projects.

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(ff) **“Owned Real Property”** means the real property owned by the Company or any Company Subsidiary, together with all buildings and other structures, facilities or improvements located thereon.

(gg) **“Permits”** means all approvals, authorizations, permissions, permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, variances, orders, registrations, franchises, declarations, rulings, notices or other authorizations.

(hh) **“Permitted Liens”** means (a) Liens to secure indebtedness under any credit facility approved in accordance with the Amended LLC Agreement, (b) statutory Liens for current taxes not yet due and payable or the amount or validity of which is being contested in good faith in appropriate proceedings, (c) mechanics’, materialmen’s, carriers’, workers’, repairers’ and similar statutory Liens arising or incurred in the ordinary course of business, and (d) Liens and other similar matters of record that arise in the ordinary course of business and do not adversely affect the value of, or the current occupancy or use of, any real or other tangible property in any material respect.

(ii) **“Person”** means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(jj) **“Personal Information”** means information protected under applicable Information Privacy and Security Requirements.

(kk) **“Preferred Manager”** has the meaning set forth in the Amended LLC Agreement.

(ll) **“Project”** or **“Projects”** means any project related to the development, construction, and operation of (i) systems of fiber conduits and fiber optic cables and equipment associated therewith to the premises (FttP) networks reaching homes and businesses, and/or (ii) the provision of high quality voice, video, Internet access and other services to end-user residential and business customers.

(mm) **“Project Assets”** means the Project Companies’ material tangible Assets (including buildings and improvements, machinery, equipment, and other tangible properties) for purposes of construction and operation of the Projects and development of the Development Projects.

(nn) **“Project Company”** means each Company Subsidiary that directly owns and/or operates a Project set forth in Section 2.25(a) of the Disclosure Schedule.

(oo) **“Real Property”** means, collectively, the Owned Real Property and the Leased Real Property.

(pp) **“Related Party”** with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves, or within the past twelve (12) months has served, as a director, executive officer, partner, member or in a similar capacity of such specified Person; or (iii) any immediate family member of a Person described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person’s immediate family, more than 5% of the outstanding equity or ownership interests of such specified Person.

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(qq) “**Representatives**” means, as applicable, each party’s directors, officers, employees, representatives and advisors.

(rr) “**Sanctioned Person**” means any Person: (a) listed on any Sanctions-related list of designated or blocked persons; (b) resident in or organized under the laws of a country or territory that is subject to comprehensive restrictive Sanctions from time to time (which includes as of the date of this Agreement Cuba, Iran, North Korea, Syria, and Russia); or (c) majority-owned or controlled by any of the foregoing.

(ss) “**Sanctions**” means those applicable trade, economic and financial sanction laws, regulations, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by the United States (including the Department of Treasury, Office of Foreign Assets Control) or other similar Governmental Authorities with jurisdiction over the Company or Company Subsidiaries.

(tt) “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(uu) “**Security Assessment**” means a security assessment (including, if applicable, penetration tests, vulnerability scans, and audits of the security controls of the Company’s IT Assets (defined below) and any related systems or software) that complies in all material respects with each of the requirements to perform security assessments under Information Privacy and Security Requirements or which are reasonably necessary to ensure or measure the security of the Company’s IT Assets and the any related systems or software.

(vv) “**Security Breach**” means any: (i) unauthorized acquisition of, access to, loss of, or misuse (by any means) of Personal Information; or (ii) unauthorized or unlawful processing, sale, or rental of Personal Information; or (iii) successful phishing or other cyberattack that caused a monetary loss or a significant business disruption.

(ww) “**State Communications Laws**” means any Law of a State Regulator or other Governmental Authority of any state or similar local authority governing the provision of telecommunications services including local exchange services, interexchange services, and competitive access services.

(xx) “**State Regulator**” means any state public utility commission or similar body with jurisdiction over the Company and any Company Subsidiary under the State Communications Laws.

(yy) “**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

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(zz) “**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, telecommunications, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties, or other taxes, fees, assessments or charges of a similar nature, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

(aaa) “**Transaction Agreements**” means this Agreement, the Amended LLC Agreement, the Equity Capital Contribution Agreement by and between the Company and Generate-Ubiquity Holdings, LLC, and the GT Network Holdings, LLC Limited Liability Agreement.

(bbb) “**Transactions**” means the transactions contemplated by this Agreement, including the Purchase and Sale Transaction.

(ccc) “**Treasury Regulations**” means the final, temporary and proposed United States Treasury Regulations promulgated under the Code.

2. **Representations and Warranties of the Company.** The Company hereby represents and warrants to each Purchaser that, except as set forth on the disclosure schedule attached as Exhibit C to this Agreement (the “**Disclosure Schedule**”), as updated by the Supplement, as the case may be, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true and complete as of the date of each Closing, except as otherwise indicated. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections contained in this Section 2, and the disclosures in any section of the Disclosure Schedule shall qualify other sections in this Section 2 only to the extent it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections.

For purposes of these representations and warranties (other than those in Sections 2.1, 2.2, 2.3, 2.4 and 2.5), the term the “Company” shall include, in addition to the Company, any Company Subsidiary and any predecessor entity of the Company or of any Company Subsidiary, unless otherwise noted herein; provided, however, the term “Company” shall not include the Network JV.

2.1 **Organization, Good Standing, Power and Qualification.** The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, use, lease and operate the properties and assets it purports to own, use, lease and operate and to carry on its business as it is currently conducted and as proposed to be conducted. The Company is duly qualified as a foreign entity to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification necessary, except, in each case, for any such failures that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Accurate and complete copies have been made available to the Purchasers through the Electronic Data Room of (a) the organizational documents of the Company and (b) any minute books or similar company records of the Company. The term “Company” as used in the preceding sentence shall include the Company’s predecessor entity, Ting Fiber, Inc.

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## 2.2 Capitalization.

(a) Section 2.2(a) of the Disclosure Schedule sets forth the authorized, issued and outstanding Equity Securities of the Company, and the record owners thereof, in each case, as of the date of this Agreement. Each such Person is the owner, beneficially and of record, free and clear of all Liens of such Equity Securities (except Liens arising under applicable securities Laws). All of the issued and outstanding Equity Securities of the Company have been duly authorized and validly issued in compliance with applicable securities Laws, this Agreement or the Amended LLC Agreement, and are fully paid.

(b) Except as provided in the Amended LLC Agreement and as set forth on Section 2.2(b) of the Disclosure Schedule, as of the date of this Agreement, (i) there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or similar agreements, orally or in writing, to purchase or acquire from the Company any of its Equity Securities, or any securities convertible into or exchangeable for any Equity Securities, (ii) the Company has no obligation to purchase, redeem, or otherwise acquire any of its Equity Securities or any other interests therein or pay any dividend or make any distribution in respect thereof, (iii) there are no outstanding, promised or authorized equity appreciation rights, phantom equity rights, profit participation rights or similar rights with respect to the Company and (iv) there are no voting trusts, proxies, shareholder agreements, transfer restrictions or other agreements or understandings in effect with respect to the voting of transfer on any securities of the Company.

## 2.3 Subsidiaries.

(a) Section 2.3(a) of the Disclosure Schedule sets forth a true and correct list of the Company Subsidiaries. Except as disclosed in Section 2.3 of the Disclosure Schedule, the Company or a Company Subsidiary holds all of the outstanding Equity Securities of each of the Company Subsidiaries free and clear of all Liens (except Permitted Liens). Except for the Company Subsidiaries and as set forth on Section 2.3(a) of the Disclosure Schedule, neither the Company nor any Company Subsidiary holds, beneficially or of record, any Equity Securities of any other Person.

(b) Each Company Subsidiary is (i) a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization, as the case may be, (ii) each Company Subsidiary is duly qualified as a foreign entity to do business, and is in good standing, in each jurisdiction where the character of the properties owned, used, leased or operated by it or the nature of its business makes such qualification necessary, except, in each case, for any such failures that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company and the Company Subsidiaries, taken as a whole and (iii) has all requisite power and authority to own, use, lease and operate the properties and assets it purports to own, and to carry on its business as it is currently conducted and as proposed to be conducted.

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(c) Except as set forth on Section 2.3(c) of the Disclosure Schedule, the Company is not a participant in any joint venture, partnership or similar arrangement. There are no outstanding, promised or authorized equity appreciation rights, phantom equity rights, profit participation rights or similar rights with respect to any Company Subsidiary.

(d) Accurate and complete copies have been made available to the Purchasers through the Electronic Data Room of (a) the organizational documents of each of the Company Subsidiaries and (b) any minute books or similar company records of each of the Company Subsidiaries.

2.4 Authorization. Subject to the requisite approval by the Company's members, all limited liability company action required to be taken by the Board and the Company's members in order to authorize the Company to enter into the Transaction Agreements, and to issue the Purchased Units at each Closing, has been taken. All action on the part of the officers of the Company necessary for the execution and delivery of the Transaction Agreements, the performance of all obligations of the Company under the Transaction Agreements to be performed as of each Closing, and the issuance and delivery of the Purchased Units has been taken prior to the Initial Closing. The Transaction Agreements, when executed and delivered by the Company, shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other Laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (iii) to the extent the indemnification provisions contained in the Amended LLC Agreement may be limited by applicable federal or state securities Laws (together, the "**Enforceability Exceptions**").

2.5 Valid Issuance of Purchased Units. The Purchased Units, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued and fully paid, will have the rights, privileges and preferences set forth in the Amended LLC Agreement, and will be issued free and clear of any Liens and be free of restrictions on transfer other than restrictions on transfer under the Transaction Agreements, applicable state and federal securities Laws and Liens created by or imposed by a Purchaser. Any common units issued upon conversion of the Purchased Units will be validly issued and fully paid, will have the rights, privileges and preferences set forth in the Amended LLC Agreement, and will be free of restrictions on transfer other than restrictions on transfer under the Transaction Agreements, applicable state and federal securities laws and Liens created by or imposed by a Purchaser. Assuming the accuracy of the representations of the Purchasers in Section 3 of this Agreement, the Purchased Units will be issued in compliance with all applicable federal and state securities Laws.

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2.6 Governmental Consents and Filings. Assuming the accuracy of the representations made by the Purchasers in Section 3 of this Agreement, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local Governmental Authority is required on the part of the Company in connection with the consummation of the Transactions, except for filings pursuant to (a) the applicable securities Laws, which have been made or will be made in a timely manner to the extent required under applicable Law, (b) the applicable State Communications Laws in connection with any Milestone Closing as set forth in Section 2.6 of the Disclosure Schedule, which will be made in a timely manner to the extent required under applicable Law, and (c) such actions or filings that the failure to take or make, as the case may be, would not have or reasonably be expected to have a Material Adverse Effect on the Company or any Company Subsidiary, individually or in the aggregate.

2.7 Litigation. Except as set forth on Section 2.7 of the Disclosure Schedule, there is no claim, action, suit, proceeding, arbitration, complaint, charge or, to the Company's knowledge, investigation (each, an "**Action**"), and no order, writ, injunction, judgment or decree of a Governmental Authority with respect to the Company, any Company Subsidiary, or any Key Employee, officer, or director (with respect to each Key Employee, officer or director, solely in their respective capacities as such), pending or, to the Company's Knowledge, currently threatened in writing against the Company other than Actions which, if decided in favor of the opposing party, would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. There is currently no Action by or before any Governmental Authority pending or, to the Knowledge of the Company, threatened against the Company or a Company Subsidiary, that, individually or in the aggregate, questions the validity of this Agreement or any of the other Transaction Agreements or would reasonably be expected to result in a Material Adverse Effect on the Company's ability to consummate the Transactions. No Company or Company Subsidiary is subject to any order, writ, injunction, judgment or decree of Governmental Authority that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect on the Company's ability to consummate the Transactions.

2.8 Intellectual Property.

(a) The Company (i) owns, free and clear of all Liens (other than Permitted Liens) all Company-Owned Intellectual Property, or (ii) possesses, and shall maintain, a valid license or other rights to use Company-Licensed Intellectual Property. Except as set forth on Section 2.8(a) of the Disclosure Schedule, the Company has not received any written communications alleging that, and to the Company's Knowledge there are no facts or basis to allege that, the Company has violated, or by conducting its business, would violate any of the Intellectual Property or other proprietary rights of any other Person.

(b) Neither the Company-Owned Intellectual Property nor the conduct of the business of the Company nor any product or service marketed or sold (or proposed to be marketed or sold) by the Company violates or infringes any Intellectual Property of any other party.

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(c) Other than with respect to commercially available software products under standard end-user object code license agreements, or other Company-Licensed Intellectual Property the license for which is disclosed in Schedule 2.10(a)(x), there are neither any outstanding options, licenses, agreements, claims, encumbrances or shared ownership interests of any kind relating to the Company Intellectual Property, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to Intellectual Property or other proprietary rights of any other Person. To the Company's Knowledge, none of the software used by the Company (i) contains any bug, defect, or error (including any bug, defect, or error relating to or resulting from the display, manipulation, processing, storage, transmission, or use of data) that materially affects the use, functionality or performance of Company products or services, or any product or system containing or used in conjunction with such Company products or services; or (ii) fails to materially comply with any applicable warranty or other contractual commitment relating to the use, functionality or performance of Company products or services.

(d) Without limiting the generality of the foregoing, the Company has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that it owns or leases or that it has otherwise provided to its employees for their use in connection with the Company's business.

(e) Each employee and consultant who develops, invents, programs or designs or has developed, invented, programmed, or designed, any Company-Owned Intellectual Property has executed and delivered to the Company an enforceable written agreement that (i) assigns to the Company all right, title, and interest in and to such Intellectual Property (including waiver of any moral rights) that (a) was developed on any amount of the Company's time or funding or with the use of any of the Company's equipment, supplies, facilities or information or (b) resulted from the performance of services for the Company, and (ii) require such employee and consultant (as the case may be) to agree not to use or disclose any trade secrets or confidential or proprietary information of the Company or any other Person (except as necessary to perform such services to Company). To the Company's Knowledge, it will not be necessary to use any inventions of any of its employees or consultants (or Persons it currently intends to hire) made prior to their employment by the Company, including prior employees or consultants, or academic or medical institutions with which any of them may be affiliated now or may have been affiliated in the past. No current or former officer, employee, contractor or consultant to the Company has valid grounds to assert any rights to any of the Company Intellectual Property. The Company has taken commercially reasonable measures to protect and maintain the confidentiality of all trade secrets included in the Company Intellectual Property. To the Company's Knowledge, there has been no unauthorized disclosure of any trade secrets included in the Company Intellectual Property.

(f) Section 2.8(f) of the Disclosure Schedule lists each item of Company-Owned Intellectual Property that is registered, filed, or issued under the authority of any Governmental Authority, including any patents, patent applications, registered trademarks, trademark applications, service marks, service mark applications, trade names, registered copyrights, domain names, all applications for any of the foregoing, and licenses to and under any of the foregoing (collectively, the "**Company-Owned Registered IP**"). The Company-Owned Registered IP has not been deemed by any Governmental Authority to be invalid or unenforceable, and no Company-Owned Registered IP has been cancelled or abandoned except in the ordinary course of business.

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(g) The Company has not embedded, used or distributed any open source, copyleft or community source code (including but not limited to any libraries or code, software, technologies or other materials that are licensed or distributed under any General Public License, Lesser General Public License or similar license arrangement or other distribution model described by the Open Source Initiative at [www.opensource.org](http://www.opensource.org), collectively “**Open Source Software**”) in connection with any of its products or services that are generally available or in development in any manner that would materially restrict the ability of the Company to protect its proprietary interests in any such product or service or in any manner that requires, or purports to require (i) any Company Intellectual Property (other than the Open Source Software itself) be disclosed or distributed in source code form or be licensed for the purpose of making derivative works; (ii) any restriction on the consideration to be charged for the distribution of any Company Intellectual Property; (iii) the creation of any obligation for the Company with respect to Company Intellectual Property owned by the Company, or the grant to any third party of any rights or immunities under Company Intellectual Property owned by the Company; or (iv) any other limitation, restriction or condition on the right of the Company with respect to its use or distribution of any Company Intellectual Property.

(h) No government funding, facilities of a university, college, other educational institution or research center, or funding from third parties was used in the development of any Company Intellectual Property. No Person who was involved in, or who contributed to, the creation or development of any Company Intellectual Property, has performed services for the government, university, college, or other educational institution or research center in a manner that would affect Company’s rights in the Company Intellectual Property.

(i) The Company lawfully owns, leases or licenses the information technology systems, and all related software, networks, systems, and information technology equipment used or held for use in connection with the Company’s operation of the business and associated documentation (collectively, the “**IT Assets**”) and such IT Assets are reasonably sufficient for the immediate and anticipated needs of the Company, including as to capacity, scalability, and ability to process current and anticipated peak volumes in a timely manner, all of which rights shall survive unchanged upon the consummation of the Transactions. The IT Assets have not materially malfunctioned or failed. The IT Assets provide commercially reasonable redundancy and speed to meet the performance requirements of the Company as currently conducted and currently proposed to be conducted. To the Company’s Knowledge, the IT Assets do not contain any viruses, malware, Trojan horses, worms, other undocumented contaminants, material bugs, vulnerabilities identified in the U.S. National Vulnerability Database maintained by the Department of Homeland Security and the National Institute of Standards and Technology, faults, disabling codes, or other devices or effects that reasonably could (i) enable or assist any Person to access without authorization the IT Assets or any information in the IT Assets, or (ii) otherwise adversely affect the functionality of the IT Assets. The Company periodically reviews patches, updates and hotfixes offered or recommended by any third-party developer or supplier of IT Assets and deploys such patches, updates and hotfixes. To the Company’s Knowledge, no person has gained unauthorized access to any IT Assets.

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(j) The Company has commercially reasonable disaster recovery, backup and data recovery, and business continuity plans, procedures and facilities in place that are appropriate to minimize the disruption of its business in the event of any material failure of any of the IT Assets in accordance in all material respects with applicable Laws, Information Privacy and Security Requirements, and the Material Contracts, and have regularly tested such plans, procedures and facilities and have conducted all Security Assessments.

(k) Except as set forth on Section 2.8(k) of the Disclosure Schedule, the Company has not experienced any Security Breach involving of any of its IT Assets, and has not experienced any unauthorized access, use or disclosure of any Personal Information Controlled by or on behalf of the Company, including any unauthorized access, use or disclosure of Personal Information. To the Knowledge of the Company, no customer of the Company has experienced (a) any Security Breach or (b) any unauthorized access, use or disclosure of any Personal Information, in either case that was caused by the Company.

(l) Except as set forth on Section 2.8(l) of the Disclosure Schedule, the conduct of the Company's business, including without limitation the Company's collection, creation, use, maintenance, and disclosure of all Personal Information has complied, and complies, in all material respects, with all Information Privacy and Security Requirements. In the past five years, the Company has not received written notice of any claims alleging, (a) Security Breaches, (b) unauthorized access or unauthorized use of any of the Company's IT Assets, or (c) any unauthorized access or acquisition of, any Personal Information maintained by the Company, or by any third party service provider on behalf of the Company. In the past five years the Company has not been notified in writing, or been required by applicable Laws or Information Privacy and Security Requirements to notify in writing, any Person of any Security Breach involving Personal Information possessed by the Company. The Company has not received any notice of any written claims, investigations, or any written notice of alleged violations of Laws or Information Privacy and Security Requirements with respect to Personal Information possessed by Company. The Company has implemented and maintains an information security program that is comprised of reasonable organizational, physical, administrative, and technical safeguards designed to protect the security, confidentiality, integrity and availability of its IT Assets and related systems and software and all Personal Information it processes, and such information security program is designed to be materially consistent with all Laws and Contracts applicable to the Company.

(m) The Company holds and has held all necessary permission to collect, use, maintain, and disclosure the Personal Information in its possession, or under its control, in connection with the operation of the business.

(n) The Company has not collected, processed, disclosed, stored or used any credit card information. The Company has entered into industry-standard agreements with third parties to process credit card payments on the Company's behalf in compliance with applicable Payment Card Industry Data Security Standards, applicable Laws, and Information Privacy and Security Requirements.

(o) The Company has developed a plan in accordance with applicable Information Privacy and Security Requirements and all Contracts to which the Company is a party to address and remediate all material threats and deficiencies identified in each Security Assessment, penetration testing and vulnerability scan conducted, and the Company has addressed and remediated those material threats and deficiencies in accordance with that plan and in accordance with applicable Information Privacy and Security Requirements and applicable Contracts.

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2.9 Compliance with Other Instruments. The execution, delivery and performance of the Transaction Agreements and the consummation of the transactions contemplated by the Transaction Agreements will not result in any violation or be in conflict with or constitute, with or without the passage of time and giving of notice, or default or breach under:

(a) any provision of the organizational documents of the Company (including the Existing LLC Agreement) or any Company Subsidiary, or any Material Contract (as defined below) except as otherwise would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole;

(b) any Law applicable to the Company or any Company Subsidiary in any material respect, in each case, assuming the taking of each action by (including the obtaining of each necessary authorization, consent or approval), or in respect of, and the making of all necessary filings with, Governmental Authority; or

(c) any instrument, order, writ or decree of any Governmental Authority.

2.10 Material Contracts.

(a) Section 2.10(a) of the Disclosure Schedule sets forth (other than with respect to Development Projects, except as set forth below), as of the date hereof, a true and complete list of all of the following types of contracts to which the Company or any Company Subsidiary is a party or by which any of its or their respective assets or properties are bound, and the Electronic Data Room provided, as of the date hereof, with respect to Development Projects, all of the following types of contracts to which the Company or any Company Subsidiary is a party or by which any of its or their assets or properties are bound (all such contracts, collectively, the "**Material Contracts**");

(i) (A) top ten revenue contracts (including physical or financial) with respect to the business of the Company or any Company Subsidiary or any Project; (B) all engineering, procurement and construction and operations and maintenance contracts for any Project with anticipated costs exceeding \$250,000, except for operations and maintenance contracts that are terminable by the Company or any Company Subsidiary on less than 90 days' notice without material penalty; (C) all guaranties, letters of credit, indemnity agreements, escrow agreements, performance or surety bonds (for such performance or surety bonds only such performance or surety bonds of \$50,000 or more) or similar credit support arrangements issued by or for the account of the Company or any Company Subsidiary in support of any of the obligations of the Company or any Company Subsidiary under any of contracts referred to in clauses (A) to (B) above; and (D) all contracts relating to Indebtedness or equity financing (including tax equity financing) for the purpose of financing the acquisition, construction, ownership, operation, maintenance or repowering of any Project;

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(ii) all contracts (including with respect to Development Projects) between the Company or any Company Subsidiary, on the one hand, and any member (or Affiliate thereof), equity-holder (or Affiliate thereof) or Affiliate of the Company or any Company Subsidiary, on the other hand;

(iii) all contracts (including with respect to Development Projects) that (A) involve standstill or similar arrangements, (B) limit the ability of the Company or any Company Subsidiary or their respective owners to engage in any line of business or to compete with any Person or in any geographical area or (C) with payments by the Company or a Company Subsidiary in excess of \$1,000,000 per annum that impose “most favored nation” pricing provisions on the Company or any Company Subsidiary;

(iv) all contracts (including with respect to Development Projects) relating to (A) Indebtedness for borrowed money of the Company or any Company Subsidiary (including all loan agreements, credit agreements, notes, indentures and similar contracts), and (B) Liens granted in connection with each of the foregoing contracts;

(v) (A) the organizational documents (including with respect to Development Projects) of each of the Company and each Company Subsidiary and (B) any contracts (including with respect to Development Projects) involving any joint venture, partnership, strategic alliance or similar arrangement or any shareholder or voting agreements, proxies or similar agreements to which the Company or any Company Subsidiary is party;

(vi) all contracts (including with respect to Development Projects) that would require the Company, any Company Subsidiary to, whether now or in the future, make, pay, fund or otherwise incur any capital expenditures or similar expenses or any liabilities in respect thereof in excess of \$300,000 per contract;

(vii) all contracts (including with respect to Development Projects) under which the Company or any Company Subsidiary has provided any surety, pledge, guarantee, bond, letter of credit or other credit support, or granted any Lien, in support of any Indebtedness that remains outstanding, whether of the Company, any such Company Subsidiary or any other Person;

(viii) all contracts containing a power of attorney granted by the Company or any Company Subsidiary;

(ix) all contracts not otherwise disclosed on Section 2.10(a) of the Disclosure Schedule reflecting obligations (contingent or otherwise) of, or payments to, the Company in excess of \$500,000 annually or \$1,000,000 in the aggregate over the course of such contract or agreement;

(x) all contracts containing a license of any Intellectual Property to or from the Company (other than with respect to commercially available software products under standard end-user object code license agreements and standard assignment agreements between the Company and its consultants, employees and advisors);

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(xi) all contracts (including with respect to Development Projects) the purpose of which is the settlement, release, compromise or waiver by the Company or any Company Subsidiary of any material rights or claims it has against any other Person or any material liabilities of any other Person to the Company or any Company Subsidiary, in each case in excess of \$100,000;

(xii) all contracts (including with respect to Development Projects) for the acquisition or disposition of any equity interests of the Company, any Company Subsidiary or any former subsidiary of the Company or any Company Subsidiary or all or substantially all of the assets of the Company or any Company Subsidiary, in each case, for consideration in excess of \$250,000 in the aggregate and for which, as of the date hereof, there remain any outstanding payments owed by any party thereto with respect thereto;

(xiii) all contracts with any Governmental Authority for the construction and build of a Project with annual payments by the Company or a Company Subsidiary in excess of \$100,000;

(xiv) all contracts related to the Leased Real Property and Owned Real Property with annual payments by the Company or a Company Subsidiary in excess of \$50,000;

(xv) all employment contracts providing for total annual compensation in excess of \$175,000, and any severance plan or severance agreements;

(xvi) all consulting contracts (including with respect to Development Projects) requiring payment to any single contractor of \$250,000 or greater per annum;

(xvii) all contracts reflecting obligations between, on the one hand, the Key Employees, directors, other employees, consultants, shareholders or Affiliates of the Company, and on the other hand, the Company or a Company Subsidiary; provided, however, that the foregoing shall not include (A) employee benefits generally made available to all employees, (B) director and officer indemnification agreements approved by the Board and previously made available to the Purchasers, (C) offer letters for at will employment (I) for Persons who are not Key Employees and (II) that do not provide for severance in an amount greater than six months of annual base compensation or (D) confidentiality and proprietary information agreements between the Company or a Company Subsidiary and an employee or consultant thereof substantially in the form or forms made available to the Purchasers where each current employee of the Company or a Company Subsidiary who has signed such an agreement also has been identified; and

(xviii) all other contracts reasonably expected to result in future payments to or by the Company or any Company Subsidiary in excess of \$250,000 in the aggregate, except for contracts that are terminable by the Company or any Company Subsidiary on less than 90 days' notice without material penalty, or are otherwise material to the business of the Company and the Company Subsidiaries taken as a whole.

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(b) Except as set forth on Schedule 2.10(b) of the Disclosure Schedules, each Material Contract is (i) in full force and effect (A) as against the Company or applicable Company Subsidiary party thereto and constitutes the legal, valid and binding obligation of the Company or such Company Subsidiary party thereto, and (B) to the Knowledge of the Company, the other parties thereto, (ii) enforceable against (x) the Company or an applicable Company Subsidiary party thereto and (y) to the Knowledge of the Company, the other parties thereto in accordance with their respective terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether considered in a proceeding at law or in equity.

(c) (i) Neither (A) the Company nor any Company Subsidiary nor (B) any other party is in default in the performance or observance of any material term or provision of, and (ii) no event has occurred that, with notice or lapse of time or both, would result in such a material default under any Material Contract by any Person party thereto. The Company has delivered or made available to the Purchasers true, correct and complete copies, including all amendments and modifications of, and supplements to, each Material Contract.

(d) Neither the Company nor any Company Subsidiary has received written notice from any other party to any Material Contract of any termination of any Material Contract.

(e) Except as set forth on Schedule 2.10(e) of the Disclosure Schedules, the Company has not received any written claims for indemnification or set-off against, or requests for escrowing of otherwise distributable cash from, the Company, any Company Subsidiary.

2.11 Certain Transactions; Affiliated Interests.

(a) Other than (i) employee benefits generally made available to all employees, offer letters for at-will employment and employment Contracts and confidentiality and proprietary information agreements between the Company or a Company Subsidiary and an employee or consultant thereof substantially in the form or forms made available to the Purchasers, (ii) director and officer indemnification agreements approved by the Board of Directors, (iii) the purchase of the Company's Equity Securities, in each instance, approved by the Board, and (iv) the Transaction Agreements, there are no Contracts, understandings or proposed transactions between the Company and any of its directors or Key Employees.

(b) The Company is not indebted, directly or indirectly, to any of its directors, officers or employees or to their respective spouses or children or to any Related Party of any of the foregoing, other than in connection with expenses or advances of expenses incurred in the ordinary course of business or employee relocation expenses and for other customary employee benefits made generally available to all employees. None of the Company's directors, officers or employees, or any members of their immediate families, or any Related Party of the foregoing are, directly or indirectly, indebted to the Company. None of the Company's directors, officers or employees, or, to the Company's Knowledge, any members of their immediate families, or any Related Party of the foregoing have (i) direct or indirect ownership interest in any firm or entity with which the Company or any Company Subsidiary is affiliated or with which the Company or any Company Subsidiary has a business relationship, or any firm or entity which competes with the Company, or (ii) personal financial interest in any Material Contract with the Company or any Company Subsidiary.

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(c) No Related Party of the Company or any Company Subsidiary (with respect to part (iii) of the definition of “Related Party,” to the Company’s Knowledge): (i) owns or has owned, directly or indirectly, any material equity or other financial or voting interest in any competitor, supplier, licensor, lessor, distributor, independent contractor or customer of the Company or any Company Subsidiary other than interests in the Company and such Company Subsidiary and other than securities of publicly traded companies purchased on a stock exchange, or investments in funds, that are or were held for investment purposes only; (ii) has or has had any material interest in any property (real or personal, tangible or intangible) that the Company or any Company Subsidiary uses or has used in or pertaining to the business of the Company or any Company Subsidiary; or (iii) has or has had any material business dealings or a financial interest in any transaction with or involving any assets or property of the Company or any Company Subsidiary, other than business dealings or transactions conducted in the ordinary course of business at prevailing market prices and on prevailing market terms.

2.12 Rights of Registration and Voting Rights. Except as provided in the Amended LLC Agreement, the Company is not under any obligation to register under the Securities Act any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities. To the Company’s knowledge, except as contemplated in the Amended LLC Agreement, no member of the Company has entered into any agreements with respect to the voting of Equity Securities of the Company.

2.13 Real Property.

(a) A true and accurate list of all of the Owned Real Property is set forth in Section 2.13(a) of the Disclosure Schedule. Each of the Company and each Company Subsidiary has good title, free and clear of all Liens (other than Permitted Liens) to all of its Owned Real Property.

(b) All of the leases of the Company and any Company Subsidiary requiring payments by the Company or any Company Subsidiary in excess of \$50,000 per annum have been made available in the Electronic Data Room to Purchaser (collectively, the “**Company Leases**”), and are listed on Schedule 2.13(b) of the Disclosure Schedule. Each of the Company and each Company Subsidiary, to the Knowledge of the Company, holds good and valid leasehold title, free and clear of all Liens (other than Permitted Lien) in and to the Leased Real Property. Except as provided in the Electronic Data Room, there are no amendments, modifications or changes, oral or written, between any of the parties to any of the Company Leases. All rents and royalty obligations under the Company Leases and the leases of the Company Subsidiaries have been paid in full to the extent due.

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(c) No material forfeiture, condemnation, eminent domain or similar proceedings have commenced against the Real Property, nor has the Company and nor has any Company Subsidiary received written notice of any future material forfeiture, condemnation, eminent domain or similar proceedings, and no Actions are pending or, to Knowledge of the Company, threatened against either the Company or any Company Subsidiary.

(d) To Knowledge of the Company, no Project or Development Project is in violation in any material respect of any applicable fire, health, building, use, planning, subdivision occupancy or zoning Laws which violation has not been cured.

(e) To Knowledge of the Company, each Project and Development Project's current occupancy and use of the Real Property does not materially violate any Lien thereon.

(f) Except with respect to those interests that are reasonably expected to be obtained when and as required at reasonable cost, with respect to each Project, the real property interests and other rights in the Real Property held by the Company or the applicable Company Subsidiary, together with any easements, rights-of-way, licenses, and crossing agreements held by the Company and the applicable Company Subsidiary, are reasonably sufficient to enable each Project to be located, constructed, operated and maintained on the Real Property.

#### 2.14 Financial Statements.

(a) The Company has delivered to each Purchaser via the Electronic Data Room its (i) consolidated unaudited balance sheet as of December 31, 2021 (the "**Balance Sheet Date**") and the related statements of income and cash flows for the twelve-month period ended on December 31, 2021 (collectively, the "**2021 Annual Financial Statements**"), (ii) the consolidated unaudited balance sheet as of March 31, 2022 and the related statements of income and cash flows for the three-month period ended on March 31, 2022 (collectively, the "**Interim Financial Statements**"), and (iii) the consolidated unaudited balance sheet as of May 31, 2022 and the related statements of income and cash flows for the month period ended on May 31, 2022 (collectively, with the 2021 Annual Financial Statements and the Interim Financial Statements, the "**Financial Statements**"). The Financial Statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods indicated, except that the Financial Statements will not contain any footnotes required by GAAP. The Financial Statements fairly present in all material respects the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case to the absence of footnotes required by GAAP.

(b) Except as set forth in the Financial Statements, the Company has no material liabilities or obligations, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the Balance Sheet Date; (ii) obligations under Contracts incurred in the ordinary course of business; and (iii) liabilities and obligations of a type or nature not required under GAAP to be reflected in the Financial Statements, which, in all such cases, individually and in the aggregate would not reasonably be expected to have a Material Adverse Effect.

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2.15 Changes. Since the Balance Sheet Date there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not caused, individually or in the aggregate, a Material Adverse Effect;

(b) any damage, destruction or loss, whether or not covered by insurance, that would have, individually or in the aggregate, a Material Adverse Effect;

(c) any waiver or compromise by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any Lien or payment of any obligation by the Company, except in the ordinary course of business and the satisfaction or discharge of which would not have, individually or in the aggregate, a Material Adverse Effect;

(e) any material change to a Material Contract by which the Company or any of its assets is bound or subject;

(f) any change in any compensation or benefits arrangement or agreement with any Key Employee, any employee whose annual compensation exceeded \$150,000 per year, any officer, any director or any member, except in the ordinary course of business consistent with past practice;

(g) any resignation, or termination of employment, notice of termination of employment provided to, or notice of termination of employment received from, of any Key Employee or any employee of the Company whose annual compensation exceeds \$150,000;

(h) any entry into, adoption of, amendment to, or termination of, any (i) equity, equity-based, phantom equity, pension, retirement, change in control, retention, deferred compensation, severance, retiree welfare or executive-only employee benefit plan, program, policy, agreement or arrangement or (ii) other material Employee Plan (defined below);

(i) any Lien created by the Company with respect to any of its material properties or assets, except for Permitted Liens;

(j) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(k) any declaration, setting aside or payment or other distribution in respect of any of the Company's equity interests, or any direct or indirect redemption, purchase, or other acquisition of any of such equity interests by the Company;

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(l) any sale, assignment or transfer of any Company-Owned Intellectual Property that could reasonably be expected to result in a Material Adverse Effect;

(m) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(n) (i) made or changed any Tax election or changed any method of tax accounting, (ii) settled or compromised any federal, state, local or foreign Tax liability or assessment, (iii) filed any amended Tax Return, (iv) entered into any closing agreement relating to any Tax, (v) agreed to an extension or waiver of a statute of limitations period applicable to any Tax claim or assessment, (vi) surrendered any right to claim a Tax refund, (vii) incurred any liability for Taxes outside the ordinary course of business, (viii) failed to pay any Tax that becomes due and payable (including any estimated tax payments), (ix) prepared or filed any Tax Return in a manner inconsistent with past practice, or (x) taken any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(o) to the Company's knowledge, any other event or condition of any character, other than events affecting the economy or the Company's industry generally, that could reasonably be expected to result in a Material Adverse Effect; or

(p) any arrangement or commitment by the Company to do any of the things described in this Section 2.15.

## 2.16 Labor & Employment Matters.

(a) The Company has made available through the Electronic Data Room a list of all persons who are employees of the Company and each Company Subsidiary as of July 31, 2022, as the case may be, which list includes the following information for each such individual: (i) employee identification number; (ii) title or position; (iii) the employing entity and, if different, the entity for whom the employee primarily renders services; (iv) annual base compensation; (v) bonus, commission and incentive plans and programs; (vi) the following information regarding employment status and classification: (A) full-time, part-time or temporary status, (B) exempt/non-exempt status; (C) active/leave status (and if on leave, the date of leave and the expected return date, if any) and (D) visa status, if applicable (specifying the type of visa) and (vii) hire date. The Company has disclosed the material written contracts the Company or Company Subsidiary, as the case may be, has entered into with any employee or staffing or temporary employment agency.

(b) The Company has made available through the Electronic Data Room a list of all persons who provide services to the Company and each Company Subsidiary as of July 31, 2022, as the case may be, as independent contractors or consultants engaged through third party entities which list includes the following information for each such individual: (i) provider identification number; (ii) the entity engaging the contractor or consultant and, if different, the entity for whom the contractor or consultant primarily is rendering services; (iii) title or position in which such individual provided services; (iv) retention date; (v) remuneration scheme (e.g., fixed fee, hourly commission) and (vi) country in which such individual provides such services.

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(c) Neither the Company nor any Company Subsidiary is delinquent in payments to any of their respective employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, paid sick leave, paid vacation or other paid time off, fees, or other direct compensation or remuneration for any service performed for it to the date hereof or amounts required to be reimbursed to such employees, consultants or independent contractors.

(d) Neither the Company nor any Company Subsidiary is bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the knowledge of the Company, has sought to represent any of the employees, Representatives, Affiliates, or agents of the Company or a Company Subsidiary. No collective bargaining contract or other agreement with an employee or labor organization is presently being negotiated by the Company or any Company Subsidiary, nor does the Company or any Company Subsidiary have a duty to bargain with any employee or labor organization. During the prior three (3) years, there has been no strike or other labor dispute involving the Company or a Company Subsidiary pending, or to the Knowledge of the Company or a Company Subsidiary, threatened, which could have a Material Adverse Effect, nor is the Company or a Company Subsidiary aware of any labor organization activity involving their respective employees. No unfair labor practice charge or labor arbitration proceeding is pending against the Company or any Company Subsidiary or, to the Knowledge of the Company and any Company Subsidiaries, threatened.

(e) The Company and each Company Subsidiary have complied in all material respects with all applicable state and federal equal employment opportunity Laws and with other Laws related to employment, including those related to terms and conditions of employment; civil rights; fair employment practices; equal pay; affirmative action; prohibitions on discrimination, harassment and retaliation; whistleblower protections; accommodation for disability, religious beliefs and practices, pregnancy and childbirth, and conditions commonly associated with pregnancy and childbirth; paid and unpaid leaves of absence, sick pay and sick leave; paid time off; wages and wage payment; severance pay; hours; meal and rest periods; minimum wage and overtime; overtime exempt status; worker classification (contractor or employee); workplace health and safety; COVID-19; layoffs and plant closings; background checks, consumer reports and investigative consumer reports; privacy; biometric information; labor relations, including collective bargaining and the right to engage in protected and concerted activity; immigration and worker authorization; workers' compensation and the collection and payment of withholding and/or Social Security taxes and other similar taxes (collectively, "**Employment Laws**"). The Company and each Company Subsidiary have withheld and paid to the appropriate governmental entity or is holding for payment not yet due to such governmental entity all amounts required to be withheld from employees of the Company or a Company Subsidiary (as the case may be) and are not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing.

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(f) Neither the Company nor a Company Subsidiary has received any written complaints from any current or former employee, independent contractor or consultant relating to any employment practices, terms and conditions of employment or engagement, or the alleged actual or potential violation of any Employment Law (including claims of sexual harassment, sexual assault or retaliation for complaining of either) during the past three (3) years.

(g) There are no pending, and in the past three (3) years there have been no, charges of discrimination, lawsuits, arbitrations, or other litigation matters by current or former employees, independent contractors or consultants related to employment or their engagement by the Company or a Company Subsidiary. Neither the Company nor any Company Subsidiary is party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees of the Company or any Company Subsidiary, as the case may be, for its employment practices or compliance with any Employment Laws. Neither the Company nor any Company Subsidiary has received within the past three (3) years any notice of intent by any Governmental Authority responsible for the enforcement of Employment Laws to conduct an investigation or audit relating to the Company or any Company Subsidiary and, to the Knowledge of the Company and the Company Subsidiaries, no such investigation or audit is in progress. In the prior three (3) years, the Company and each Company Subsidiary have timely investigated all sexual harassment and other harassment, discrimination and retaliation allegations and, with respect to any such allegation with potential merit, the Company or Company Subsidiary has taken prompt corrective action that is reasonably calculated to prevent further sexual harassment, other harassment, discrimination or retaliation.

(h) There has been no mass layoffs or plant closings (as those terms are defined under the federal Workers Adjustment and Retraining Notification Act and any similar state or local statute) (collectively, (“WARN Act”)) in the past three (3) years affecting any employee of the Company or any Company Subsidiary that would trigger an obligation under the WARN Act, and the Company and each Company Subsidiary are in material compliance with all obligations under the WARN Act. The Company and each Company Subsidiary accurately completed and retained USCIS form I-9s for each of their respective current employees and all former employees whose employment ended within the prior three (3) years.

(i) To the Knowledge of the Company and each Company Subsidiary, no Key Employee intends to terminate employment with the Company or a Company Subsidiary. Neither the Company nor a Company Subsidiary have a present intention to terminate the employment of any Key Employee. The employment of each employee of the Company and each Company Subsidiary is terminable at the will of the Company or a Company Subsidiary.

(j) The Company has not made any representations regarding equity incentives or phantom equity interests to any officer, employee, director or consultant except as set forth in the Amended LLC Agreement.

(k) To the Company’s Knowledge, no employee is obligated under any contract, judgment, order, decision, or decree to act in a manner that would conflict with the Company’s business and no employee would violate any contract, judgment, order, decision, or decree to which he or she is subject by carrying out business on behalf of the Company.

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(l) Section 2.16(l) of the Disclosure Schedule sets forth any and all restrictive covenants to which Key Employees, all other employees, or consultants are subject.

2.17 Employee Benefit Plans.

(a) Section 2.17(a) of the Disclosure Schedule sets forth a list of the material Employee Plans (other than offer letters for at-will employment issued by the Company or any Company Subsidiary pursuant to a standard template that do not contain severance, retention or change in control benefits). “**Employee Plans**” means all (i) employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) and bonus, stock option, stock purchase, restricted stock, equity, equity-based, phantom equity, incentive, deferred compensation, retiree medical or life insurance, welfare, paid-time off, change in control, retention, retirement, pension, supplemental retirement, severance or other benefit or compensation plans, programs, agreements, policies, practices or arrangements, (A) that are maintained, contributed to, required to be contributed to, or sponsored, by the Company or any Company Subsidiary or ERISA Affiliates for the benefit of any current or former employee, officer, consultant or director of the Company or any Company Subsidiary (or any current or former dependent or beneficiary thereof) or (B) with respect to which the Company or any Company Subsidiary has any material liability (actual, contingent or otherwise, whether pursuant to Law or contract, and whether directly or by virtue of being a current or former affiliate of another entity) and (ii) employment, consulting, termination, or severance agreements or arrangements pursuant to which the Company or any Company Subsidiary currently has any obligation with respect to any current or former employee, officer, consultant or director of the Company or any Company Subsidiary, including any current or former dependent or beneficiary thereof, or with respect to which the Company or any Company Subsidiary has any material liability (actual, contingent or otherwise, whether pursuant to Law or contract, and whether directly or by virtue of being a current or former affiliate of another entity). The Company has made available to Purchasers (i) a true and complete copy of each Employee Plan (and all amendments thereto) and all current summary plan descriptions (and summaries of material modification thereto) and the most recent determination, advisory or opinion letter from the IRS with respect to the tax-qualified status of any Employee Plan (or if an Employee Plan is unwritten, has provided the Purchasers a written summary of the material terms thereof), (ii) all other documents relating to each Employee Plan, including all texts and agreements and related trust agreements, service agreements, funding agreements and annuity contracts (including any amendments, modifications and supplements to any of the foregoing), (iii) the most recent returns and reports (e.g., Forms 5500, 1094-C and 1095-C) and all schedules thereto, (iv) the most recent testing reports and (v) all communications with any Governmental Authority with respect to an Employee Plan during the last three (3) years.

(b) (i) Each Employee Plan has been maintained, administered, operated and funded in all material respects in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code, (ii) each of the Company and the Company Subsidiaries has performed all material obligations required to be performed by it under any Employee Plan and applicable Law, and is not in any material respect in default under or in violation of any Employee Plan, (iii) to the Knowledge of the Company, no “disqualified person” (as defined in Section 4975 of the Code) or “party in interest” (as defined in Section 3(14) of ERISA) has engaged in a non-exempt “prohibited transaction” within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to any Employee Plan for which a statutory or regulatory exemption does not apply or that has not been corrected in full, and (iv) no Action (other than claims for benefits in the ordinary course) is pending or, to the Knowledge of the Company, threatened in writing with respect to any Employee Plan.

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(c) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received or is the subject of a current determination or opinion letter from the IRS and no fact or event has occurred since the date of such letter or letters from the IRS that would reasonably be expected adversely to affect the qualified status of any such Employee Plan or the Tax exempt status of any such trust.

(d) Neither the Company, nor any Company Subsidiary or ERISA Affiliates maintain, contribute to, are required to contribute to, sponsor or have any direct or contingent liability with respect to (i) any plan or arrangement subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code, (ii) any multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA, (iii) any multiple employer plan as defined in Section 4063 of ERISA or Section 413(c) of the Code, (iv) any defined benefit plan as defined in Section 414(j) of the Code, (v) any multiple employer welfare arrangement as defined in Section 3(40) of ERISA, (vi) any voluntary employees' beneficiary association as defined in Section 501(c)(9) of the Code, (vii) any welfare benefit fund within the meaning of Section 419 of the Code or (viii) any plan, agreement, policy or arrangement that provides medical, dental, vision, prescription drug or life insurance benefits with respect to any current or former employee, officer, director, or other service provider of the Company or any Company Subsidiary (or any of their respective dependents or beneficiaries) following their termination of employment or other service other than coverage mandated by Law which is paid solely by such persons (and neither the Company nor any Company Subsidiary has any obligation or commitment to provide any such benefits).

(e) No Employee Plan is under, and neither the Company nor any Company Subsidiary or ERISA Affiliates has received any notice of, an audit or investigation by any Governmental Authority.

(f) Each Employee Plan subject to Section 409A of the Code (if any) is in compliance in all material respects therewith, such that no Taxes or interest is due and owing in respect of such Employee Plan failing to be in compliance therewith.

(g) Neither the Company nor any Company Subsidiary or ERISA Affiliates has any liability (whether or not assessed) under Sections 4980B, 4980D or 4980H of the Code, or with respect to any failure to satisfy its reporting obligations it may have under Sections 6055 and/or 6056 of the Code.

(h) Neither the Company nor any Company Subsidiary or ERISA Affiliates is a party to any contract, agreement or arrangement (including any Employee Plan), or has made any commitment (whether oral or written), that could, directly or in combination with any other event, result, separately or in the aggregate, in the payment, acceleration, funding or enhancement of any benefit, or require the Company or any Company Subsidiary or ERISA Affiliates to fund any liabilities or place in trust or otherwise set aside any amounts in respect of any Employee Plan, or limit or restrict the right of the Company or any Company Subsidiary or ERISA Affiliates to merge, amend or terminate any Employee Plan or that could result in the receipt or retention by any Person of any "parachute payment" within the meaning of Section 280G of the Code (without regard to any "reasonable compensation" determination), in each case as a result of or in connection with the execution of this Agreement and/or the consummation of the transactions contemplated by this Agreement.

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(i) There has not been any announced plan or commitment to create any additional arrangement that would be considered an Employee Plan, or to amend or modify any current Employee Plan.

2.18 Tax Matters.

(a) There are no material Taxes due and payable by the Company and the Company Subsidiaries (whether or not shown on any Tax Return) which have not been timely paid. There are no accrued and unpaid Taxes of the Company and the Company Subsidiaries which are due, whether or not assessed or disputed. All Tax Returns required to be filed by or with respect to the Company and the Company Subsidiaries have been duly and timely filed and such Tax Returns are true, complete and correct in all respects. There are in effect no extensions or waivers of applicable statutes of limitations with respect to Taxes for any taxable period of the Company and the Company Subsidiaries. No claim has been made by any taxing authority in any jurisdiction where the Company or the Company Subsidiaries do not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(b) The Company and the Company Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) The unpaid Taxes of the Company and the Company Subsidiaries(i) did not, as of the latest balance sheet date, exceed the reserve for Tax liability (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the latest balance sheet (rather than in any notes thereto), and (ii) do not exceed that reserve as adjusted for the passage of time through the end of the Initial Closing in accordance with past custom and practice of the Company and the Company Subsidiaries in preparing its financial statements.

(d) There have been no Tax examinations, audits, investigations, assessments, or other administrative or judicial proceedings with respect to any Taxes or Tax Returns of, including or related to the Company or the Company Subsidiaries. There are no pending or threatened actions by any applicable taxing authority. All deficiencies asserted, or assessments made, against the Company or the Company Subsidiaries as a result of any examinations by any taxing authority have been fully and timely paid. There are no encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company or the Company Subsidiaries.

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(e) The Company and the Company Subsidiaries are not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(f) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to the Company or the Company Subsidiaries.

(g) Other than as provided on Schedule 2.18, the Company and the Company Subsidiaries have not been a member of an affiliated, combined, consolidated or unitary group for Tax purposes. The Company and the Company Subsidiaries have no liability for the Taxes of any person (other than the Company and the Company Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(h) The Company and the Company Subsidiaries will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing as a result of: (i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing; (ii) an installment sale or open transaction occurring on or prior to the Closing; (iii) a prepaid amount received on or before the Closing; (iv) any closing agreement under Section 7121 of the Code (or any similar provision of state, local or foreign law); or (v) any election under Section 108(i) of the Code.

(i) Neither the Company nor any of the Company Subsidiaries are a “foreign person” as provided in Treasury Regulation Section 1.1445-2. Neither the Company nor any of the Company Subsidiaries are, or have been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(j) Neither the Company nor any of the Company Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(k) The Company and the Company Subsidiaries are not, and have not been, a party to, or a promoter of, any transaction that could give rise to (i) a registration obligation with respect to any Person under Section 6111 of the Code or the regulations thereunder, (ii) a list maintenance obligation with respect to any Person under Section 6112 of the Code or the regulations thereunder, or (iii) a disclosure obligation as a “reportable transaction” under Section 6011 of the Code and the regulations thereunder.

2.19 Insurance. Section 2.19 of the Disclosure Schedule sets forth a true and complete list of all insurance policies in force with respect to the Company and each of the Company Subsidiaries, which list shall include as to each policy: insurer name, name of policy, policy numbers, and whether each policy is written on an “occurrence” or “claims made” basis. For each insurance policy listed at Section 2.19 of the Disclosure Schedule, binders of insurance have been produced to Purchasers in the Electronic Data Room. Each of the listed policies is in full force and effect, and no written notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the effective date of such cancellation. Except as set forth on Section 2.19 of the Disclosure Schedule, during the last three calendar years, neither the Company nor any of the Company Subsidiaries has made any material claim under any such insurance policies or, to the Knowledge of the Company, suffered any loss that could give rise to any such material claim.

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2.20 Compliance with Laws; Permits. Except as set forth on Section 2.20 of the Disclosure Schedule:

(a) the Company and each Company Subsidiary have operated their respective businesses in compliance in all material respects with, all Laws applicable to them or their respective businesses or assets;

(b) neither the Company nor any Company Subsidiary has received written notice from any Governmental Authority in the past three years that the Company or any Company Subsidiary has failed or is failing, to be in material compliance with any Laws applicable to it;

(c) neither the Company nor any Company Subsidiary has received written notice from any Governmental Authority or any other Person in the past three years that the Company or any Company Subsidiary is (i) not presently in possession of any material permit necessary for such member to construct, own, lease or operate its Assets and to carry on its business as currently conducted, (ii) presently in non-compliance with any such Permits, except where the failure to have, or the suspension, cancellation, termination or revocation of, any such permit would not be material to the Company and the Company Subsidiaries, and (iii) each such Permit is in full force and effect and (except as set forth on Section 2.20(c) of the Disclosure Schedule) is not subject to any current action or to any unsatisfied condition that would reasonably be expected to allow material modification or revocation of such approval, all applicable appeal periods have expired with respect thereto (other than with respect to Development Projects in the ordinary course), and neither the Company nor any Company Subsidiary nor any of their Affiliates that holds such Permit on behalf of or for the benefit of the Company or a Company Subsidiary is, or has been, in violation of any such Permit;

(d) the Company and each Company Subsidiary (either in their capacity or through one of their Affiliates) hold or have applied for all Permits required for the operation of the Company's or any Company Subsidiaries' businesses. There is no action pending, or to the Knowledge of the Company, threatened, which would reasonably be expected to result in the revocation or termination of any such Permit or the imposition of any penalty or condition thereunder. True and complete copies of all such Permits have been made available to the Purchasers. To the Knowledge of the Company, except as disclosed on Section 2.20(d) of the Disclosure Schedule, there have not been any adverse modification, revocation, or termination of, or any other adverse change in, any such Permits;

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(e) To the Knowledge of the Company, no Representative, Affiliate, member, director, officer, employee or agent of the Company or any Company Subsidiary (in each case acting on behalf of or for the benefit of the Company or a Company Subsidiary):

(i) has, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any employee of any Governmental Authority, political party or official thereof or candidate for political office, or any other Person for the purpose of corruptly (A) influencing any official act or decision of such official, party, or candidate, (B) inducing such official, party, or candidate to use his, her, or its influence to affect any act or decision of a Governmental Authority, or (C) securing any improper advantage, in the case of (A) through (C) above in order to assist the Company in obtaining or retaining business for or with, or directing business to, any Person, in violation of any applicable Anti-Corruption Laws;

(ii) is or has been a Sanctioned Person;

(iii) has transacted any business directly or knowingly indirectly with any Sanctioned Person, to the extent such transactions would violate applicable Sanctions, or otherwise knowingly engaged in transactions in violation of applicable Sanctions or Ex-Im Laws; and

(f) each of the Company and the Company Subsidiaries that is subject to the jurisdiction of a Governmental Authority is not subject to any actual or pending complaint or other proceeding to revoke or involuntarily modify (solely to the extent such involuntary modification is not generally applicable but applicable solely to such entity) any rate schedule, tariff, or other terms or conditions for service on such entity's assets under any Laws applicable to regulation by such Governmental Authority.

No representation or warranty is made under this Section 2.19 with respect to Taxes of the Company or any Company Subsidiary.

2.21 Environmental Matters. Except as would not, or would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect:

(a) the Company complies with all applicable Environmental Laws and possess and complies with all applicable Environmental Permits required under Environmental Laws to operate as it presently operates;

(b) there are not Constituents of Concern at, or released from, any property owned or operated currently or in the past by the Company under circumstances that are reasonably likely to result in liability of the Company under any applicable Environmental Law;

(c) the Company has not received any written notification alleging that it is liable for, or request for information pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Law, concerning any release or threatened release of Constituents of Concern at any location;

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(d) the Company has not received any written claim, notice or complaint, or been subject to any Action, relating to noncompliance with Environmental Laws or any other liabilities or obligations arising from Constituents of Concern or pursuant to Environmental Laws, and to the Knowledge of the Company no such Action is threatened; and

(e) the Company has made available to Purchaser true and complete copies of all material environmental records, reports, notifications, permits, pending permit applications, correspondence, engineering studies and environmental studies or assessments.

2.22 Bank Accounts; Powers of Attorney. Set forth in Section 2.22 of the Disclosure Schedule is a true and complete list of the locations and numbers of all bank accounts, investment accounts, and safe deposit boxes under the control of or for the benefit of the Company or any Company Subsidiary, together with the names of all Persons who are authorized signatories or have access thereto or control thereunder, and all outstanding powers of attorney or similar authorizations granted by any the Company, copies of which have been provided to the Purchasers.

2.23 Internal Controls.

(a) The Company and each Company Subsidiary maintains a system of internal control over financial reporting. Such internal control over financial reporting is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP in all material respects.

(b) The Company and each Company Subsidiary has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the Company's or any Company Subsidiary's ability to record, process, summarize and report financial information and (ii) any fraud, known to the Company or any Company Subsidiary, whether or not material, that involves management or other employees who have a significant role in the Company's or any Company Subsidiary's internal controls over financial reporting, and each such deficiency, weakness of fraud so disclosed, if any, has been disclosed to the Purchasers in writing prior to the date hereof.

2.24 Bankruptcy; Solvency. There are no bankruptcy, reorganization or receivership proceedings pending against any of the Company, any Company Subsidiary, or any Affiliate of the foregoing. Neither the Company nor any Company Subsidiary has received any notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, order, or resolution or of seeking the appointment of a receiver, trustee, custodian, or similar fiduciary. The Company and each Company Subsidiary is solvent and has sufficient assets and capital to carry on its business as currently conducted and presently proposed to be conducted and to perform its obligations hereunder and under the Amended LLC Agreement.

2.25 Projects.

(a) Section 2.25(a) of the Disclosure Schedule sets forth a complete and correct list of each Project (on a city-level basis) owned by the Company and any Company Subsidiary that is either (i) operating or (ii) under construction, including, for each Project, the Project Company that owns or is constructing such Project.

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(b) Section 2.25(b) of the Disclosure Schedule sets forth a complete and correct list of each Project (on a city-level basis) under development by the Company or any Company Subsidiary (excluding the Projects) (the “**Development Projects**”), including, for each Development Project, the company that owns or is developing such Development Project.

(c) Except as set forth in Section 2.25(c) of the Disclosure Schedule, there has not been any material damage, destruction or loss (whether or not covered by insurance) to, or any material interruption in or impairment of the construction and operation of any Project or the development of any Development Project.

2.26 Title to Project Assets.

(a) Each Project Company has good and valid title to or a valid leasehold interest in all of their material Assets, except those sold or otherwise disposed of for fair value since the date of the Financial Statements in the ordinary course of business. The Project Assets owned or leased by each Project Company constitute all of the Project Assets necessary for each Project Company to carry on their respective businesses in substantially the same manner as is currently conducted, presently proposed to be conducted and taking into account the current stage of development of the Development Projects. None of the material Assets owned or leased by the Project Companies is subject to any lien, other than Permitted Liens.

(b) Except as set forth in Section 2.26(b) of the Disclosure Schedule, all tangible Project Assets owned or leased by the Project Companies have been maintained in all material respects in accordance with generally accepted industry practice, are in all material respects in reasonable operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put.

2.27 Disclosure.

(a) To the Knowledge of the Company, none of the representations or warranties of the Company contained in this Agreement and none of the information contained in any schedule, certificate, or other document or information delivered by or on behalf of the Company pursuant hereto (including any information contained in the Disclosure Schedules), taken as a whole, contain any untrue statement of a material fact, or omit to state any material fact, necessary to make the statements contained herein or therein not misleading in any material respect in light of the circumstances in which made.

(b) To the Knowledge of the Company, the information contained in the Electronic Data Room and all information provided by or on behalf of the Company to the Purchasers in connection with the transactions contemplated hereby, when taken as a whole together, does not include any untrue statement of a material fact, or omit to state any material fact, necessary to make such information taken as a whole not misleading in any material respect in light of the circumstances in which made.

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2.28 Exclusivity of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2 (AS MODIFIED BY THE DISCLOSURE SCHEDULE), THE OTHER TRANSACTION AGREEMENTS AND CERTIFICATES DELIVERED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE COMPANY AND THE COMPANY SUBSIDIARIES DO NOT MAKE AND HAVE NOT MADE ANY REPRESENTATION OR WARRANTY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER TRANSACTION AGREEMENTS. THE COMPANY AND THE COMPANY SUBSIDIARIES EXPRESSLY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO PURCHASERS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA), INCLUDING AS TO THE CONDITION, VALUE OR QUALITY OF THEIR RESPECTIVE BUSINESSES OR THEIR ASSETS, AND THE COMPANY AND THE COMPANY SUBSIDIARIES SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THEIR ASSETS, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT SUCH SUBJECT ASSETS ARE BEING ACQUIRED “AS IS, WHERE IS” ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION.

3. Representations and Warranties of the Purchasers. Each Purchaser hereby represents and warrants to the Company, severally and not jointly, that:

3.1 Organization; Authorization. To extent such Purchaser is an organization, such Purchaser is duly organized or formed, validly existing in good standing under the Laws of the jurisdiction of its incorporation or formation, and such Person has all requisite power and authority to execute and deliver this Agreement and the other Transaction Agreements to which it is a party and to perform its obligations hereunder and thereunder. To the extent that such Purchaser is an individual, such Purchaser is a bona fide resident of the state or country identified in the address or addresses of such Purchaser set forth on Exhibit A, and such Purchaser and possesses full legal capacity and authority to execute and deliver this Agreement and the other Transaction Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by such Purchaser of this Agreement and each other Transaction Agreement to which it is a party, and the consummation of the transactions contemplated hereby and thereby, and the performance of all obligations of such Purchaser hereunder and thereunder, have been, or will be prior to Closing, duly and validly authorized by all necessary action on the part of such Purchaser. The Transaction Agreements to which such Purchaser is a party, when executed and delivered by the Purchaser, will constitute valid and legally binding obligations of such Purchaser, enforceable against such Purchaser in accordance with their terms, except as limited by the Enforceability Exceptions.

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3.2 Purchase Entirely for Own Account. This Agreement is made with such Purchaser in reliance upon such Purchaser's representation to the Company, which by such Purchaser's execution of this Agreement, such Purchaser hereby confirms that the Purchased Units to be acquired by such Purchaser will be acquired for investment for such Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, such Purchaser further represents that such Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Purchased Units. Such Purchaser has not been formed for the specific purpose of acquiring the Purchased Units.

3.3 Disclosure of Information. Such Purchaser has made its own inquiry and investigation into, and based thereon, has formed an independent judgment concerning, the Company and the Company Subsidiaries and the Transactions. Such Purchaser has been furnished with, had an opportunity to discuss with the Company's management or given adequate access to, such information regarding the business and finances of the Company and such other matters with respect to the Company as a reasonable person would request and consider in evaluating the Transactions. Such Purchaser understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company's business and prospects, but were not necessarily an exhaustive description. Such Purchaser believes that it has received all the information it considers necessary or appropriate for deciding whether to purchase the Purchased Units. In making its decision to execute and deliver this Agreement and to consummate the Transactions, such Purchaser has (a) independently investigated the Company's and the Company Subsidiaries' business operations, assets, liabilities, results of operations and financial condition, and (b) relied solely on the results of such investigation and the representations and warranties in Section 2 of this Agreement (as modified by the Disclosure Schedule). Such Purchaser acknowledges and agrees that the Company, the Company Subsidiaries and each of their respective assets are being furnished "as is", "where is" and, subject to only the representations and warranties contained in Section 2 (as modified by the Disclosure Schedule), in the other Transaction Agreements to which it is a part and the certificates delivered hereby and thereby, with all faults and without any other representation or warranty of any nature whatsoever. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of such Purchaser to rely thereon. Nor does the foregoing limit the Purchaser's reliance or right to rely on the Company's representation that no representation or warranty of the Company contained in this Agreement as qualified by the Disclosure Schedules and no certificate furnished to the Purchasers at the Closing contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

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3.4 Restricted Securities. Such Purchaser understands that the Purchased Units have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Purchaser's representations as expressed herein. Such Purchaser understands that the Purchased Units are "restricted securities" under applicable U.S. federal and state securities Laws and that, pursuant to these Laws, such Purchaser must hold the Purchased Units indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Such Purchaser acknowledges that the Company has no obligation to register or qualify the Purchased Units for resale except as set forth in the Amended LLC Agreement. Such Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Purchased Units, and on requirements relating to the Company which are outside of such Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

3.5 No Public Market. Such Purchaser understands that no public market now exists for the Purchased Units, and that the Company has made no assurances that a public market will ever exist for the Purchased Units.

3.6 Accredited Investor. Such Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company. Such Purchaser, either alone or together with its Representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Purchased Units and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Purchased Units and, at the present time, is able to afford a complete loss of such investment.

3.7 Foreign Investors. If such Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), such Purchaser hereby represents that it has satisfied itself as to the full observance of the Laws of its jurisdiction in connection with any invitation to subscribe for the Purchased Units or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Purchased Units, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Purchased Units. Such Purchaser's subscription and payment for and continued beneficial ownership of the Purchased Units will not violate any applicable securities or other Laws of such Purchaser's jurisdiction.

3.8 No General Solicitation. Neither such Purchaser, nor any of its officers, directors, employees, agents, stockholders, members or partners has either directly or indirectly, including, through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Purchased Units. Disqualification. Such Purchaser represents that neither such Purchaser, nor any Person with whom such Purchaser shares beneficial ownership of the Company securities for purposes of Rule 506(d) of the Securities Act, is subject to any "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a "**Disqualification Event**"), except, if applicable, for a Disqualification Event as to which rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.

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3.10 Sufficient Funding. Such Purchaser has and will have at each Closing unencumbered cash sufficient (or binding commitments therefor) to satisfy its obligations to purchase the Purchased Units in accordance with the terms hereof as and when such funding obligations are due pursuant to the terms of this Agreement. Such Purchaser acknowledges and agrees that neither the receipt nor the availability of any financing is a condition to such Purchaser's obligations under this Agreement.

3.11 Legal Proceedings. There is currently no Action by or before any Governmental Authority pending or, to the knowledge of such Purchaser, threatened against the Purchaser, that, individually or in the aggregate, questions the validity of this Agreement or any of the other Transaction Agreements or would reasonably be expected to result in a material adverse effect on the Purchaser's ability to consummate the Transactions. Such Purchaser is not subject to any order, writ, injunction, judgment or decree of Governmental Authority that, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on such Purchaser's ability to consummate the Transactions.

3.12 Exculpation Among Purchasers. Such Purchaser acknowledges that it is not relying upon any Person, other than the Company and its officers and managers, in making its investment or decision to invest in the Company. Such Purchaser agrees that neither any Purchaser nor the respective Controlling Persons, officers, directors, partners, members, stockholders, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore taken or omitted to be taken by any of them in connection with the purchase of the Purchased Units.

4. Conditions Precedent.

4.1 Conditions to the Purchasers' Obligations at the Initial Closing and Each Milestone Closing. The several obligations of each Purchaser at each Closing, to consummate the transactions to be consummated at such Closing and to purchase and pay for the Purchased Units being purchased by it at such Closing pursuant to this Agreement, are subject to the satisfaction (or waiver, to the extent permitted by Laws) of the following conditions precedent with respect to such Closing:

(a) With respect to the Initial Closing, the representations and warranties contained herein of the Company shall be true and correct on and as of the date of the Initial Closing. With respect to any Milestone Closing, the representations and warranties contained herein of the Company, as updated by a Supplement, shall be true and correct in all material respects, without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty (except with respect to Section 2.14(a), Section 2.15(o) and the use of the defined term "Material Contract" or "Material Contracts"), on and as of the date of such Milestone Closing.

(b) With respect to the Initial Closing, the Company shall have performed all obligations and covenants herein required to be performed or observed by the Company on or prior to the Initial Closing. With respect to any Milestone Closing, the Company shall have performed all obligations and covenants herein required to be performed or observed by the Company on or prior to the applicable Milestone Closing, including (but not limited to) those set forth in Exhibit D hereto.

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(c) With respect to each Closing, no Governmental Authority has issued, enacted, entered or enforced any permanent injunction that restrains, enjoins or otherwise prohibits the Transactions. There is currently no Action by or before any Governmental Authority pending or threatened that, individually or in the aggregate, questions the validity of this Agreement or any of the other Transaction Agreements or would reasonably be expected to result in a Material Adverse Effect on any party's ability to consummate the Transactions, including the sale of the Purchased Units, and there is no order, writ, injunction, judgment or decree of Governmental Authority that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect on any party's ability to consummate the Transactions, including the sale of the Purchased Units.

(d) The Purchasers at each Closing shall have received a certificate, dated as of such Closing, executed by an officer of the Company, certifying on behalf of the Company that the conditions specified in this Article IV as applicable to and with respect to such Closing have been fulfilled.

(e) The Purchasers at the Initial Closing shall have received a certificate, dated as of the Initial Closing, executed by an officer of the Company, certifying: (i) that true and complete copy of the Amended LLC Agreement, as in effect immediately upon the Initial Closing; (ii) as to the incumbency and genuineness of the signatures of each officer of the Company executing any of the documents to be executed and delivered at or before the Initial Closing; and (iii) the genuineness of the resolutions of the members and board of managers of the Company approving the Transactions.

(f) The Purchasers at each Closing shall have received a certificate of status, compliance, good standing or like certificate with respect to the Company issued by the appropriate Governmental Authority of the jurisdiction of formation.

(g) With respect to each Closing, there shall not have occurred and be continuing a Material Adverse Effect.

(h) With respect to any Milestone Closing, none of the following events shall have occurred: (i) the closing of any transaction which results in a direct or indirect change in control of the Company; (ii) the Company or any Company Subsidiary becoming insolvent or bankrupt or declaring or filing for bankruptcy; (iii) the Company's material breach of any covenant under this Agreement or a material breach by the Company or any Company Subsidiary of the Amended LLC Agreement (in the case of a breach of the Amended LLC Agreement, which is not cured within 30 days following notice); (iv) an Event of Default (as defined in Amended LLC Agreement) (or similar term) by Tucows Inc. or any of its Affiliates under, and as such term (or similar term) is defined from time to time in, the Tucows Credit Agreement (as defined in the Amended LLC Agreement); (v) a material breach if not cured or otherwise remedied in accordance with the terms of any credit facility (taking into account any cure periods), by the Company or any Company Subsidiary under any debt facilities where the Company or any Company Subsidiary incurs indebtedness for borrowed money; (vi) a Return Breach (as defined in the Amended LLC Agreement); (vii) a failure to pay the Redemption Price (as defined in the Amended LLC Agreement) when due in accordance with Section 9.10 or Section 9.11 of the Amended LLC Agreement; and (viii) upon the occurrence of the End Date.

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(i) With respect to the Initial Closing, such Purchaser shall have received a counterpart of the Amended LLC Agreement duly executed by the Company, the Purchasers who are participating in the Initial Closing. With respect to each Milestone Closing, such Purchaser shall have received an updated Exhibit A hereto and an updated Schedule of Members to the Amended LLC Agreement reflecting such Purchaser's purchase of the applicable Milestone Units.

(j) With respect to each Closing, the sale of the Purchased Units by the Company shall not be prohibited or enjoined by any Laws or governmental or court order or regulation.

(k) With respect to the Initial Closing, any and all credit facilities that attach Liens to Company or Company Subsidiary assets, or under which the Company is a borrower or guarantor, (y) have been amended, and (z) all Liens (other than Permitted Liens) on the assets of the Company or any Company Subsidiary have been removed (or the applicable lender has agreed to release all Liens subject to making any applicable filings) each in a manner satisfactory to the Purchasers.

(l) With respect to each Closing, all material third party consents, including regulatory consents, or waivers required as a result of the Transactions have been obtained.

(m) With respect to each Closing, all license transfers, license issuances, or license reissuances which are necessitated by the Transactions of the Company have been obtained.

(n) The Company shall deliver to Purchasers a duly executed IRS Form W-9 completed with respect to the Company.

(o) With respect to each Closing, all corporate and other proceedings in connection with the Transactions contemplated at such Closing and the documents incident thereto are reasonably satisfactory in form and substance to Purchaser.

(p) The Company shall deliver to Purchasers (i) a duly executed Third Amended and Restated Credit Agreement with the Royal Bank of Canada, (ii) a Release and Discharge, executed by Royal Bank of Canada and any other non-Purchaser signatory, and (iii) financing statement amendments with respect to the financing statements listed in Schedule A to the Release and Discharge.

4.2 Conditions of the Company's Obligations at Closing. The obligation of the Company to consummate each transaction to be consummated at applicable Closings and to issue and sell to each Purchaser the Purchased Units to be purchased by it at such Closings pursuant to this Agreement, is subject to the satisfaction (or waiver, to the extent permitted by Laws) of the following conditions precedent:

(a) The representations and warranties contained herein of such Purchaser shall be true and correct on and as of the date of the applicable Closing, except where the failure of any such representation or warranty to be true or correct on and as of the applicable Closing would not have a material adverse effect on such Purchaser's ability to fulfill its obligations at the applicable Closing.

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(b) Such Purchaser shall have performed in all material respects all obligations and covenants herein required to be performed or observed by such Purchaser on or prior to the applicable Closing.

(c) No Governmental Authority has issued, enacted, entered or enforced any permanent injunction that restrains, enjoins or otherwise prohibits the Transactions.

(d) The sale of the Purchased Units by the Company shall not be prohibited or enjoined by any Laws or governmental or court order or regulation.

(e) The Company shall have received a counterpart of the Amended LLC Agreement, duly executed by the Purchasers.

5. Miscellaneous.

5.1 Survival of Warranties. Unless otherwise set forth in this Agreement, the representations and warranties of the Company and the Purchasers contained in, made pursuant to this Agreement or made in any certificate delivered pursuant shall survive the execution and delivery of this Agreement and each Closing through the earlier to occur of the last Milestone Closing and the End Date and shall in no way be affected by any investigation or knowledge of the subject matter thereof made by or on behalf of the Purchasers. Nothing herein shall preclude a Purchaser from seeking to enforce, against the applicable party hereto, any covenant or agreement that contemplates performance after such Closing until such covenant or agreement is performed.

5.2 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. No Purchaser shall assign its rights and obligations under this Agreement without the prior written consent of the Company. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

5.3 Governing Law. This Agreement shall be governed by the internal Law of the State of Delaware, without regard to conflict of law principles that would result in the application of any Law other than the Law of the State of Delaware.

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5.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

5.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

5.6 Notices.

(a) General. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) upon confirmation of receipt (other than an automated response), if sent by electronic mail, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page or Exhibit A, or to such e-mail address or address as subsequently modified by written notice given in accordance with this Section 5.6, or to the Company as set forth below:

Ting Fiber, LLC  
96 Mowat Avenue  
Toronto A6 M6K 3M1  
Ontario, Canada  
Attn: Legal  
Email: [legal@tucows.com](mailto:legal@tucows.com)

with a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Attn: Douglas E. Kingston  
E-mail: [douglas.kingston@morganlewis.com](mailto:douglas.kingston@morganlewis.com)

(b) Consent to Electronic Notice. Each Purchaser consents to the delivery of any notice by electronic transmission at the e-mail address set forth below such Purchaser's name on the signature page or Exhibit A, as updated from time to time by notice to the Company. To the extent that any notice given by means of electronic transmission is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected e-mail address has been provided, and such attempted electronic notice shall be ineffective and deemed to not have been given. Each Purchaser agrees to promptly notify the Company of any change in its e-mail address, and that failure to do so shall not affect the foregoing.

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5.7 No Finder's Fees. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with the Transactions. Each Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of the Transactions (and the costs and expenses of defending against such liability or asserted liability) for which each Purchaser or any of its officers, employees or Representatives is responsible. The Company agrees to indemnify and hold harmless each Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of the Transactions (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or Representatives is responsible.

5.8 Fees. Except as otherwise expressly provided herein, each of the parties hereto shall pay all of its own fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers or other Representatives and consultants and appraisal fees, costs and expenses) incurred in connection with the negotiation of this Agreement and the consummation of the Transactions.

5.9 Amendments and Waivers. Any term of this Agreement may be amended, terminated or waived only with the written consent of the Company and the holders of at least a majority of the then-outstanding Purchased Units. Any amendment or waiver effected in accordance with this Section 5.9 shall be binding upon the Purchasers and each transferee of the Purchased Units, each future holder of all such Purchased Units, and the Company.

5.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

5.11 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by Law or otherwise afforded to any party, shall be cumulative and not alternative.

5.12 Entire Agreement. This Agreement (including the Exhibits hereto) and the other Transaction Agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

5.13 Reserved.

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5.14 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

5.15 WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS AND DOCUMENTS DELIVERED IN CONNECTION THEREWITH, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

5.16 Communications. Following the Initial Closing, press releases or other public statements concerning the Transactions may be made by the Company or the Purchasers, as the case may be, only after consultation with, and written approval by, the Company (in the case of a press release or public statement issued or proposed to be issued by a Purchaser) or the holders of a majority of the then outstanding Purchased Units (in the case of a press release or public statement issued or proposed to be issued by the Company), and each Purchaser hereby agrees that any information regarding the Transactions shall be subject to the confidentiality obligations set forth in the Amended LLC Agreement.

*[The remainder of this page is left intentionally blank; signature pages follow.]*

IN WITNESS WHEREOF, the parties have executed this Series A Preferred Unit Purchase Agreement as of the date first written above.

**COMPANY:**

TING FIBER, LLC

By: /s/ Davinder Singh

Name: Davinder Singh

Title: Chief Financial Officer and Treasurer

[SIGNATURE PAGE TO SERIES A PREFERRED UNIT PURCHASE AGREEMENT]



IN WITNESS WHEREOF, the parties have executed this Series A Preferred Unit Purchase Agreement as of the date first written above.

**PURCHASER:**

GENERATE TF HOLDINGS, LLC

By: /s/ Andrew Marino  
Name Andrew Marino  
Title Manager

[SIGNATURE PAGE TO SERIES A PREFERRED UNIT PURCHASE AGREEMENT]

**Rule 13a-14(a)/15d-14(a) Certification**

I, Elliot Noss, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tucows Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls 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 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 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 function):
  - 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 November 3, /s/ Elliot Noss  
2022

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Elliot Noss  
President and Chief Executive Officer

**Rule 13a-14(a)/15d-14(a) Certification**

I, Davinder Singh, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tucows Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls 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 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 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 function):
  - 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 November 3, /s/ Davinder Singh  
2022

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Davinder Singh  
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with the Quarterly Report of Tucows Inc. (the “Company”) on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Elliot Noss, President and Chief Executive Officer of the Company, hereby certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) 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.

Date: November 3, 2022

/s/ Elliot Noss

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Elliot Noss

President and Chief Executive Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with the Quarterly Report of Tucows Inc. (the “Company”) on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Davinder Singh, Chief Financial Officer of the Company, hereby certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (3) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (4) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 3, 2022

/s/ Davinder Singh

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Davinder Singh

Chief Financial Officer