IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
APPGATE, INC., *et al.*,[1]	)	Case No. 24-10956 (CTG)
Debtors.	)	(Joint Administration Requested)

DECLARATION OF RENE RODRIGUEZ,
CHIEF FINANCIAL OFFICER OF APPGATE, INC.,
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

I, Rene Rodriguez, hereby declare under penalty of perjury:

1. Appgate is an industry leader in secure network access, providing an innovative suite of cybersecurity solutions and advisory services to more than 660 leading private enterprises and government agencies around the world. Appgate's consumer-focused security approach enables fast, simple, and secure connections from any device and/or location across any information technology infrastructure in cloud, on-premise, and hybrid environments.

2. Appgate's product offering is well-suited to meet today's enterprise cybersecurity needs. Today's digital-first environment demands the type of dynamic and adaptable security services that Appgate provides. Despite strong industry positioning, the Company's growth has not reached the level needed to justify its current capital structure. While it is common—and often expected—for software providers like Appgate to start out as unprofitable while they invest in

[1] The above-captioned debtors and debtors -in-possession (collectively, the "Debtors") in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Appgate, Inc. (7231); Appgate Cybersecurity, Inc. (5215); Cryptzone Worldwide, Inc. (3539); Cryptzone International Holdings Inc. (6133); Cryptzone North America Inc. (6777); Immunity, Inc. (3955); Immunity Federal Services, LLC (9722); Immunity Products, LLC (9570); Immunity Services, LLC (9647); Easy Solutions Enterprises Corp. (1954); Catbird Networks, Inc. (6028); and Easy Solutions, Inc. (0401). The location of the Debtors' service address is: 2 Alhambra Plaza, Suite PH–1–B, Coral Gables, Florida 33134.

future growth, operational precision is often required to achieve sustained profitability. In the initial years of Appgate's life as a standalone enterprise, the Company invested heavily in sales strategies that did not produce the business relationships required to take full advantage of opportunities in the market. Demand for Appgate's cybersecurity solutions existed, but the Company could not scale quickly enough.

3. At the same time, Appgate was forced to grapple with the difficult economic conditions that followed the COVID-19 pandemic. Rising inflation and significant interest rate hikes created headwinds for a number of the Company's clients, including key clients in Latin America, that have not yet fully recovered. In response to both macroeconomic factors and specific business challenges, the Company undertook a holistic review of its business with the goal of right-sizing its operating structure. To that end, the Company proactively pursued a number of operational initiatives aimed at addressing these challenges by improving liquidity management, reducing certain operating expenses, and overhauling its sales strategy to drive revenue and unlock Appgate's growth potential.

4. These efforts have already produced meaningful results—today, the Company is able to target and reach customers with greater efficiency by employing effective sales tactics that are designed to identify and secure enterprise customers at significantly reduced cost. Although this substantial progress has moved the Company in the direction of sustained growth, the Company's debt levels have proven unsustainable given its current business performance.

5. In addition, the Company has been nearly constantly in the market evaluating sale or capital raise opportunities. In December 2021, the Company engaged Guggenheim Securities, LLC ("Guggenheim") and Jefferies LLC ("Jefferies") to begin exploring various strategic alternatives, including facilitating a secondary offering and, beginning in February 2022,

conducting the first of several marketing processes for some or all of the Company's assets. As recently as October 2023, the Company directed Cantor Fitzgerald & Co. ("Cantor") to launch a comprehensive marketing process to solicit interest in a potential sale of all or substantially all of the Company's assets. However, as discussed in greater detail below, none of these initiatives were successful. Market conditions were not conducive to a secondary offering, and the extensive sale processes conducted in 2022 and 2023 did not produce any actionable letters-of-intent.

6. On June 9, 2023, to address its near-term maturity wall, the Company and its 1L Convertible Noteholders entered into the 1L Convertible NIA, which extended the maturity date under the Original 1L Convertible NIA from February 9, 2024, to February 9, 2026. However, the maturity date extension also came with additional terms, one of which was a liquidity covenant that, beginning in December 2023, the Company had difficulty meeting. Since that time, the Company has been forced to seek forbearances on a weekly basis. To support the Company through this period, the 1L Convertible Noteholders have contributed new money a total of six times since January 2024 for a total incremental new money funding of $18,239,156 above the $86,914,906 that was previously outstanding under the Original 1L Convertible NIA. This period of insufficient liquidity and overleverage has made it difficult for the Company to advance its operational efficiencies further.

7. In light of these challenges, the Company recognized that a more comprehensive solution was needed to address its deteriorating liquidity and continuing default under the 1L Convertible NIA. After years of out-of-court marketing efforts did not produce an actionable alternative, it became clear that an in-court deleveraging transaction was likely the Company's best available alternative. To that end, the Company retained Kirkland & Ellis, LLP ("Kirkland") and Cole Schotz P.C. ("Cole Schotz"), as legal counsel, and Triple P Securities, LLC and Triple P

RTS, LLC, as investment banker and financial advisor, respectively (together, "Portage Point," and collectively with Kirkland and Cole Schotz, the "Advisors") to assist the Company in considering its available alternatives, including a potential chapter 11 filing.

8. The Advisors engaged with the 1L Convertible Noteholders, the 2L Convertible Noteholders, and the 3L RCF Lender (each as defined below, and collectively, the "Prepetition Secured Lenders") regarding the terms of a comprehensive, value-maximizing restructuring transaction that would delever the Company's balance sheet in full to allow the Company the breathing room required to focus on maximizing operational efficiencies and unlocking sustained profitable growth.

9. These prepetition efforts culminated in the entry into the RSA on May 3, 2024, which enjoys the support of 100% of Holders of 1L Convertible Notes Claims, 100% of Holders of 2L Convertible Notes Claims, 100% of Holders of 3L RCF Claims, and approximately 89% of the Company's outstanding Equity Interests. The Plan completely delevers the Debtors' balance sheet, which will allow them to emerge with the ability to invest in the business. All general unsecured creditors will ride through unimpaired and can take confidence that the Company will be able to meet their operating expenses as they come due thanks to the $18 million DIP Facility contemplated by the RSA. On May 3, 2024, the Company commenced solicitation on the Plan, which concluded on May 5, 2024. 100% of voting creditors voted in favor of the Plan.

10. Through this prepackaged chapter 11 process, Appgate will quickly address its unsustainable debt load through a complete equitization of its balance sheet, obtain incremental liquidity through the proposed DIP Facility—which will also be equitized at emergence—and eliminate its large public filing costs by emerging as a private company. In sum, Appgate will

emerge as a healthy, well-capitalized organization that will continue to do what it already does best—provide first-in-class cybersecurity solution.

Background and Qualifications

11. I am the Chief Financial Officer (the "CFO") of Appgate. I have approximately 20 years of experience as a finance executive with expertise in managing financial operations, capital markets, investor relations, financial analysis, and mergers and acquisitions. Since 2011, I have served as CFO and a partner of Medina Capital, a private equity firm that invests in high-growth cybersecurity software companies. In May 2017, I joined Cyxtera Technologies, Inc. ("Cyxtera") as CFO and continued to work there until Appgate's spin-off on December 31, 2019. In early 2020, I became the CFO of Appgate Cybersecurity, Inc. and held that position until October 2021 when Appgate went public on the over-the-counter market and I became the CFO of Appgate. In my capacity as CFO, I am generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. I am above 18 years of age, and I am competent to testify.

12. On the date hereof (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Court"). I submit this declaration (this "Declaration") to assist the Court and interested parties in understanding why the Debtors filed these Chapter 11 Cases and in support of the Debtors' chapter 11 petitions and the relief requested in the motions filed along with the petitions (collectively, the "First Day Motions"). The facts set forth in each First Day Motion are incorporated herein by reference.

13. I am familiar with the contents of each First Day Motion and believe that the relief requested therein is necessary for the Debtors to smoothly transition into chapter 11 and to continue ordinary course operations postpetition.

14. The statements set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Debtors' management team and the Debtors' Advisors, my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, and my opinions based upon my experience and knowledge. I am authorized to submit this Declaration on behalf of the Debtors.

15. To further familiarize the Court with the Debtors, their business, the circumstances leading to these Chapter 11 Cases, and the relief the Debtors are seeking in the First Day Motions, I have organized this Declaration into four sections as follows:

- **Part I** provides a general overview of the Debtors' business operations and corporate history;
- **Part II** provides an overview of the Debtors' prepetition corporate and capital structure;
- **Part III** describes the circumstances leading to the commencement of these Chapter 11 Cases; and
- **Part IV** sets forth the evidentiary basis for the relief requested in the First Day Motions.

I. Appgate's Business and History.

A. Appgate is Spun-Off from Cyxtera.

16. Prior to December 31, 2019, Appgate operated its business as a wholly-owned subsidiary of Cyxtera. On December 31, 2019, Cyxtera spun out the Company so its management could focus on adapting Appgate's operations to the rapidly changing cybersecurity industry and take advantage of the growth opportunity it presented. Just under two years later, in October 2021, the Company went public on the over-the-counter market through a merger with a shell entity,

which gave Appgate access to significant capital to help accelerate growth, scale, and invest in go-to-market strategies. Since going public, Appgate has traded over the counter under the symbol "APGT."

17. Today, Appgate is an industry leader in secure network access, providing innovative, identity-centric, and context-aware, "zero trust" ("Zero Trust") security solutions to more than 660 enterprises and government agencies across the world. Appgate's mission is to empower and protect how people work and connect by enabling users on any device to securely access any application using the network or cloud and perform any action in a secure manner.

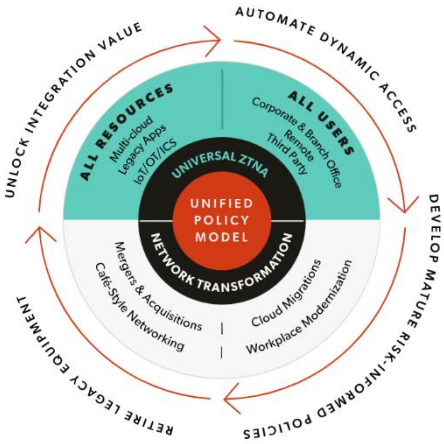
B. Business Operations.

18. Since the going public in October 2021, the Company's business has continued to grow. Today, Appgate consists of multiple operating entities and maintains operations across North America, South America, Europe, and Asia. Appgate serves customers in approximately 70 countries across all major industries, including: (a) retail; (b) government and military; (c) finance; (d) cybersecurity; (e) media and content; (f) banking and securities; (g) network service providers; and (h) cloud and information technology ("IT") services. Appgate's customer base is diverse, with no single customer accounting for 10% or more of the total revenue. 71 of Appgate's customers had an annual recurring revenue ("ARR") above $100,000 in 2023, which was an 11% increase from 2022. Appgate's ARR was $33.7 million and $36.1 million for 2022 and 2023, respectively. Appgate's dollar-based net retention rates were 96% for 2022 and 99% for 2023.

19. As the digital world continues to rapidly evolve, legacy security platforms are unable to provide the data security needed to prevent against increasing cybersecurity attacks. Legacy security models, such as a VPN, give users unnecessarily wide, unrestricted, and

overprivileged network access, enabling attackers to move easily within organizations and cause tremendous damage. At the same time, enterprises are actively undergoing digital transformations as they seek to automate operations, generate new revenue streams, transition business models, and deliver a seamless customer experience. This digital transformation, as well as the increasing prevalence of remote work environments, has changed the nature of cybersecurity risks by proliferating the number of entry points to organizations' networks. Simultaneously, the number and sophistication of cyberattacks have increased dramatically, as has their costs and frequency. This combination of network vulnerability and malicious activity has created a cybersecurity crisis, amplifying the threat landscape that many organizations face.

20. To address this evolving landscape and prominent cyberattack risk, Appgate has emerged as the leading secure access provider of world-class cybersecurity solutions based on the principles of Zero Trust security. Zero Trust is an innovate approach to cybersecurity, built on the foundation that a user or a device, whether inside or outside the network, should not be trusted by default. Instead, access to a resource or application within the network is only granted after a user's identification is verified. In addition, once verified, users are only given access to the resources or applications that they request, and users cannot access other applications or resources unless they are re-verified.



21. The process works as follows: ***first***, a user undergoes a multi-factor authentication to confirm its identity. ***Second***, the user's device is scanned to ensure that it is compliant with security protocol, including anti-malware systems and up-to-date operating systems. ***Third***, the user will be granted access only to explicitly-authorized

resources. ***Finally***, once access has been granted, the Zero Trust architecture continuously monitors for threatening activity, and any perceived threat on account thereof will revoke a user's access.

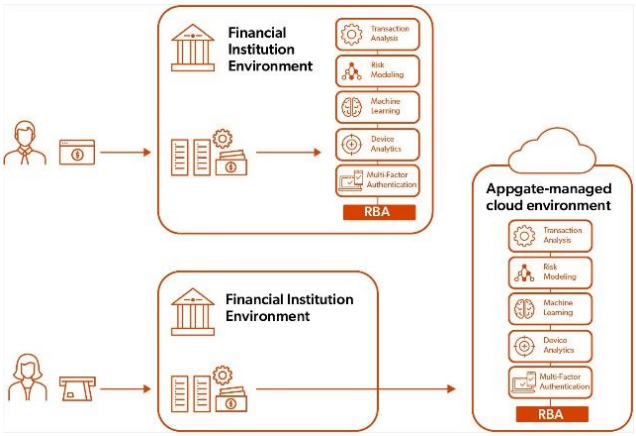
C. Appgate's Products.

22. The combination of Appgate's cybersecurity products and services leverage this Zero Trust model, providing enterprises and government agencies with the comfort that their networks are secure.

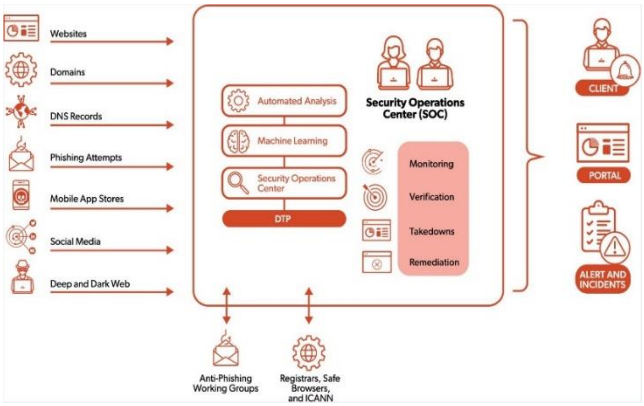
23. *Software-Defined Perimeter ("SDP").* Unlike legacy solutions where users manually and constantly switch VPN tunnels to establish secure connections, SDP users connect once and gain limited access (to the extent required) only to authorized applications, while the rest of the enterprises' network remains invisible. Even after access is granted, access remains conditional and based on multiple factors, and if the SDP solution detects unique changes during the session, the user's access can be terminated in part or in full.

24. The most common use of the Company's SDP solution includes VPN replacement for remote access, securing cloud access, supporting cloud migrations, securely providing third-party access, secure development and operations, and integrating merger and acquisition assets into a secure network environment.

25. *Risk Based Authentication ("RBA").* RBA solution offers a contextually-aware approach to authenticating users and approving IT transactions without friction. Password-only solutions tend to be weak authentication measures that unintentionally create various hurdles for enterprise customers. By contrast, Appgate's RBA approach uses real-time behavioral risk assessments, context-based authentication, and machine learning, each designed to protect individuals against targeted cybersecurity attacks. Specifically, transactions and user behavior are continuously monitored to qualify risk. Should the RBA solution determine that the person attempting to access an account is illegitimate, transactions can be challenged or blocked in real-time, quickly preventing account takeover and ensuring the safety and security of its consumers.



26. *Digital Threat Protection ("DTP").* DTP is a managed solution designed to combat external threats targeting consumers across social media platforms, mobile applications, and the dark web via phishing links, malicious mobile applications, and fraudulent websites, among other things. DTP continuously monitors activity, provides early-stage warnings, orchestrates takedowns, and can proactively stop attacks before substantial damage is done, often before intended victims are even aware. DTP offers unparalleled threat visibility and comprehensive risk management to identify and eliminate attacks early on.



27. DTP allows customers to quickly identify which users have fallen victim to phishing attacks and mitigate the impact in a timely and efficient manner. Additionally, DTP immediately captures malware-injected pages to enhance detection accuracy and aid in forensic investigations. Critically, DTP requires minimal effort to implement and maintain.

28. *Threat Advisory Service ("TAS").* TAS is a specialized consulting service delivered by a team of white-hat hackers (*i.e.*, a person who uses their hacking ability with the owner's consent) that can identify vulnerabilities in access control, authentication mechanisms, and user permissions, strengthening security postures and enhancing secure access. TAS uses a combination of advanced penetration testing, adversary simulation, and other customized advisory services. Appgate uses highly sophisticated and bespoke processes based on the individual needs of their customers to simulate nation-state-level and other complex attacks. The white-hat hackers help organizations test and validate the security investments they've made and act as an opportunity to implement Appgate's software solutions based on remediation recommendations. TAS is an important tool in Appgate's pursuit to future proof their customers' defenses against malicious activity, as they allow Appgate to gain real-time information from their services engagements to stay up to date on evolving cybersecurity threats. Appgate leverages this data to inform its software roadmap, helping the Company effectively address their customers' expanding security needs.

1. Appgate's Revenue Categories.

29. Appgate's business operations are divided into three distinct revenue categories: (a) a subscription model (the "Subscription Model"); (b) perpetual licenses (collectively, the "Perpetual Licenses"); and (c) service-related performance obligations (collectively, the "Consulting Services").

30. The Subscription Model is a term-based license that includes both an upfront cost when the distinct license is made available to the customer as well as revenue recognized ratably over the contract period for support and maintenance. The Subscription Model is the largest segment of the Company's business, representing more than 84% of Appgate's revenue in fiscal year 2023.

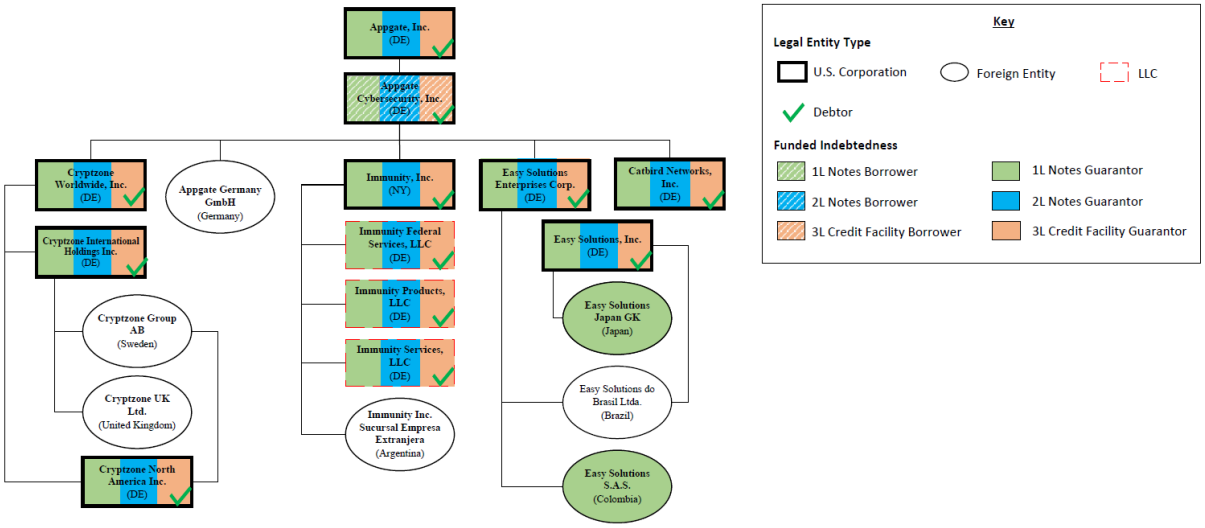
31. Like the Subscription Model, the Perpetual Licenses generally include both an upfront cost when the license is made available to an Appgate client as well as revenue recognized ratably over the contract period for support and maintenance. Rather than being term based, however, the Perpetual Licenses gives the purchaser the right to use the software in perpetuity for a one-time fee, so long as they remain in compliance with the software's established terms. In 2023, approximately 3% of Appgate's revenue was generated from Perpetual Licenses.

32. The Consulting Services predominantly relate to the provision of consulting and threat-advisory services and, to a lesser extent, training and software installation. Software installation services are distinct from subscriptions and do not result in significant customization of the software. In 2023, approximately 13% of Appgate's revenue was generated from service-related performance obligations.

II. Appgate's Organizational Structure and Prepetition Capital Structure.

A. Appgate's Organizational Structure.

33. The below chart depicts the Debtors' current corporate structure. Appgate, Inc. has 18 wholly-owned subsidiary entities, 11 of which are Debtors in these Chapter 11 Cases.



B. Appgate's Prepetition Capital Structure.

34. Appgate's prepetition capital structure includes approximately $170.2 million in funded debt as of the Petition Date, consisting of: (a) 1L Convertible Notes; (b) 2L Convertible Notes; and (c) 3L RCF Loans, as reflected below.

Funded Debt	Maturity	Approximate Principal	Approximate Accrued Interest	Approximate Outstanding Amount
1L Convertible Notes	February 9, 2026	$101.2 million	$2.0 million	$103.2 million
2L Convertible Notes	May 9, 2026	$8.8 million	$0.1 million	$8.9 million
3L Revolving Credit Facility	August 9, 2026	$50.0 million	$8.1 million	$58.1 million
Total Funded Debt Obligations:		***$160.0 million***	***$10.2 million***	***$170.2 million***

1. 1L Convertible Notes Issuance Agreement.

35. On February 9, 2021, Appgate Cybersecurity, Inc. ("AG Cybersecurity") issued $50 million in aggregate principal amount of 5.00% convertible senior notes pursuant to (a) that certain notes issuance agreement, dated as of February 8, 2021 (the "Original 1L Convertible NIA"), by and among AG Cybersecurity, as issuer, the guarantors party thereto (the "Original 1L Convertible Notes Guarantors"), and Magnetar Financial LLC ("Magnetar"), as representative of

the 1L Convertible Noteholders and (b) that certain notes purchase agreement, dated as of February 8, 2021 (as amended and restated on June 9, 2023, and as may be further amended, supplemented, or otherwise modified from time to time, the "Original 1L Convertible NPA"), by and among AG Cybersecurity and the lenders party thereto. On October 12, 2021, AG Cybersecurity issued an additional $25 million in aggregate principal amount of 5.00% convertible senior notes pursuant to the Original 1L Convertible NPA.

36. On June 9, 2023, AG Cybersecurity, Appgate, Inc. (together with the Original 1L Convertible Notes Guarantors, Easy Solutions S.A.S., and Easy Solutions Japan GK, the "1L Convertible Notes Guarantors"), Magnetar, and U.S. Bank Trust Company, National Association, as collateral agent entered into that certain amended and restated notes issuance agreement (as may be further amended, supplemented, or otherwise modified from time to time, the "1L Convertible NIA"), pursuant to which the Original 1L Convertible NIA was amended and restated to, among other things: (a) secure the obligations under the 1L Convertible Notes with a first priority security interest in substantially all assets of AG Cybersecurity and the 1L Convertible Notes Guarantors; (b) extend the maturity date of the 1L Convertible Notes to February 9, 2026, or, at Magnetar's election, February 9, 2028; (c) require Appgate to maintain liquidity of not less than $5 million as of the last day of any fiscal quarter; (d) increase the interest payable semi-annually under the 1L Convertible Notes to an annual rate of 8.00% if paid in cash or 8.50% if paid in kind; and (e) adjust the conversion rate for the 1L Convertible Notes.

37. On June 9, 2023, AG Cybersecurity and Appgate, Inc. entered into that certain amended and restated note purchase agreement (the "1L Convertible NPA"), by and among AG Cybersecurity, Appgate, Inc., and the lenders party thereto (the "1L Convertible Noteholders"), pursuant to which the Original 1L Convertible NPA was amended and restated to, among other

things: (a) provide for the purchase by the 1L Convertible Noteholders of up to $15 million aggregate principal amount of additional 1L Convertible Notes in one or more subsequent closings on or prior to June 9, 2025; and (b) amend all previously issued 1L Convertible Notes to reflect terms consistent with the 1L Convertible NIA. Except for the foregoing, the terms of the 1L Convertible NPA are substantially the same as the terms of the Original 1L Convertible NPA.

38. On May 2, 2024, AG Cybersecurity, Appgate, Inc., the 1L Convertible Notes Guarantors, and the 1L Convertible Noteholders entered into that certain amendment to the 1L Convertible NIA, pursuant to which the 1L Convertible NIA was amended to: (a) increase the amount of additional 1L Convertible Notes the 1L Convertible Noteholders that could be issued under the 1L Convertible NPA from $15,000,000 to $30,000,000; and (b) increase the Company's permitted indebtedness (with respect to the principal amount of 1L Convertible Notes) from $90,000,000 to $105,000,000.

39. Between January 2024 and the date hereof, AG Cybersecurity issued an additional $18,239,156 in aggregate principal amount of the 8.5% convertible senior notes pursuant to the 1L Convertible NPA (collectively, the "1L Convertible Notes"). As of the Petition Date, approximately $103,185,923 in aggregate amount remains outstanding under the 1L Convertible NIA, including (a) approximately $7,914,906 of paid-in-kind interest and (b) approximately $2,031,861 of accrued and unapplied paid-in-kind interest.

2. 2L Convertible Notes Issuance Agreement.

40. On July 20, 2023, AG Cybersecurity issued $2.5 million in aggregate principal amount of 9.5% convertible notes pursuant to (a) that certain notes issuance agreement, dated as of July 20, 2023 (the "2L Convertible NIA"), by and among AG Cybersecurity, as issuer, Appgate, Inc., as parent, the guarantors party thereto, and Appgate Funding, LLC ("Appgate

Funding"), as representative of the 2L Convertible Noteholders and as collateral agent and (b) that certain notes purchase agreement, dated as of July 20, 2023 (the "2L Convertible NPA"), by and among AG Cybersecurity, Appgate, Inc., and Appgate Funding. Between August 2023 and the date hereof, AG Cybersecurity issued an additional $5,999,000 in aggregate principal amount of the 9.5% convertible senior notes pursuant to the 2L Convertible NPA (collectively, the "2L Convertible Notes"). As of the Petition Date, approximately $8,964,734 in aggregate amount remains outstanding under the 2L Convertible NIA, including (a) approximately $326,005 of paid-in-kind interest and (b) approximately $139,729 of accrued and unapplied paid-in-kind interest.

41. Concurrently with the execution of the 2L Convertible NIA and the 2L Convertible NPA, AG Cybersecurity, Appgate, Inc. AG Cybersecurity's domestic subsidiaries, and SIS Holdings, L.P. ("SIS Holdings") entered into that certain amendment to the 3L RCF Credit Agreement, dated as of July 20, 2023 (the "Amendment"), pursuant to which the 3L RCF Credit Agreement was amended to, among other things: (a) allow for the issuance of 2L Convertible Notes and the grant of a second priority security interest to Appgate Funding to secure the obligations under the 2L Convertible Notes; and (b) subordinate the obligations under the 3L RCF Credit Agreement to a third priority security interest in substantially all assets of AG Cybersecurity, Appgate, Inc., and AG Cybersecurity's domestic subsidiaries.

3. 3L RCF Credit Agreement.

42. The Debtors are party to that certain revolving credit agreement, dated as of April 26, 2022 (the "Original 3L RCF Credit Agreement"), by and among AG Cybersecurity, as borrower, Appgate, Inc. as parent, the guarantors party thereto, and SIS Holdings as lender (the "3L RCF Lender"), which provides for a $50 million revolving credit facility.

43. On June 9, 2023, AG Cybersecurity, Appgate, Inc., AG Cybersecurity's domestic subsidiaries, and the 3L RCF Lender entered into that certain amended and restated revolving credit agreement (the "3L RCF Credit Agreement"), pursuant to which the Original 3L RCF Credit Agreement was amended and restated to, among other things: (a) secure the obligations under the 3L RCF Credit Agreement with a second priority security interest in substantially all assets of AG Cybersecurity, Appgate, Inc. and AG Cybersecurity's domestic subsidiaries (which was later subordinated to a third priority security interest pursuant to the Amendment); (b) extend the maturity date of the Original 3L RCF Credit Agreement to August 9, 2026, or, if Magnetar elects to extend the maturity date of the 1L Convertible Notes to February 9, 2028, to August 9, 2028; and (c) require Appgate to maintain liquidity of not less than $5 million as of the last day of any fiscal quarter.

44. Additionally, on May 2, 2024, AG Cybersecurity, Appgate, Inc., AG Cybersecurity's domestic subsidiaries, and the 3L RCF Lender entered into that certain amendment to the 3L RCF Credit Agreement which increased the permitted indebtedness (with respect to the principal amount of 1L Convertible Notes) from $90,000,000 to $105,000,000.

45. As of the Petition Date, approximately $50,000,000 in aggregate principal amount and approximately $8,108,888 of accrued interest due at maturity remains outstanding under the 3L RCF Credit Agreement.

4. Equity Interests.

46. Appgate, Inc.'s certificate of incorporation authorizes the board of directors to issue 270 million shares of common stock ("Common Shares") and 1 million shares of preferred stock ("Preferred Shares"). As of the Petition Date, 131,793,660 Common Shares are outstanding. The

Common Shares trade over the counter under the ticker symbol "APGT." To date, Appgate, Inc. has not issued any Preferred Shares.

III. Events Leading to These Chapter 11 Cases.

A. Prepetition Challenges.

1. Macroeconomic Headwinds.

47. Although Appgate's core business performance has been strong since the beginning of its life as a standalone company, a combination of operational inefficiencies and macroeconomic headwinds made it difficult for the Company to fully seize the market opportunity.

48. The largest of these obstacles was the fact that, early into its independent existence, the Company built a sales function that was mismatched to the market. Appgate expended considerable resources investing heavily into marketing strategies and personnel that were ineffective at generating the correct leads and converting any such leads into paying customers. These marketing strategies focused on breadth over the data-driven, targeted outreach that the Company emphasizes today. Sales personnel and digital marketing campaigns were able to reach enterprises *en masse*, but just not the ones that were likely to become paying customers. As a result, despite its market-leading products tailored to today's enterprise cybersecurity needs, the Company could not capitalize on the sizable market opportunity in the cybersecurity space.

49. Further, as the COVID-19 pandemic continued and the economic conditions lingered, enterprises, including many of the Debtors' clients, sought to reduce operational expenses, including cybersecurity, resulting in a decline of Appgate's sales. Although the COVID-19 pandemic is now behind us, certain of the Debtors' key customers, particularly in the Latin American markets, never fully recovered. The business faced a decrease in renewal subscriptions, and many of Appgate's clients that chose to renew their subscriptions sought to do

so at reduced rates. In order to facilitate customer retention, Appgate offered various reduced-price incentives which, though successful in retaining key clients, resulted in a decline in revenue for both RBA and TAS and operational stability.

50. Furthermore, as a public company, Appgate must comply with onerous regulatory and reporting requirements. Appgate incurs, among other things, significant regulatory compliance obligations across areas of incremental audits, investor relations, financial reporting, legal costs, and Sarbanes-Oxley Act compliance, each of which come with SEC reporting requirements. For a company of Appgate's size, these expenses put the Company at a disadvantage by limiting investment in further development of Appgate's products or increasing market reach. By becoming a private company through these prepackaged chapter 11 cases, the Debtors will relieve themselves of these burdensome operating costs.

B. Prepetition Initiatives.

51. In the years leading up to the Chapter 11 Cases, Appgate explored various incremental financing opportunities and comprehensive restructuring solutions, including improved liquidity management, potential cost saving/revenue enhancing initiatives, and, once it became clear the foregoing efforts were unsuccessful, contingency planning. The prepetition initiatives included, among other things: (a) implementing certain cost-cutting measures; (b) appointing a new Chief Executive Officer; (c) appointing independent and disinterested directors to the boards of directors of the Debtors, as applicable (the "Boards"); (d) exploring strategic alternatives; and (e) engaging with key creditor constituencies across the Company's capital structure regarding the terms of a potential restructuring transaction. In connection with the foregoing, Appgate engaged the Advisors to assist the Company in its evaluation and review of various strategic alternatives.

1. Cost Cutting Initiatives.

52. Between July 2022 and January 2023, Appgate initiated certain cost-reduction programs, including decreasing certain operating expenses and a reduction in workforce. These measures were largely directed at deconstructing the Company's marketing function and replacing it with strategies and personnel that were better suited to reach target customers. In total, these cost saving measures led to estimated annual cash savings of approximately $30 million, and the resultant marketing efforts have shown strong results.

2. New Management.

53. In January 2023, Appgate appointed Leo Taddeo as the Company's new Chief Executive Officer and President. Mr. Taddeo has over 25 years of executive federal and commercial experience, and previously served as Appgate's Chief Information Security Officer ("CISO") and head of its Federal Group and Threat Advisory Services division prior to his appointment as CEO. He is also a former special agent responsible for the special operations/cyber division of the FBI's New York office where he directed over 400 special agents and professional support personal conducting cyber investigations, surveillance operations, information technology support, and crisis management.

54. Mr. Taddeo's extensive, specialized cybersecurity industry experience makes him uniquely qualified to lead growth strategies that will continue to drive Appgate's recognized market leadership in Zero Trust, fraud prevention, and threat advisory services.

3. Enhanced Corporate Governance.

55. On April 3, 2024, Appgate engaged two consultants to aid the Debtors in their evaluation of alternatives and contingency planning efforts. The consultants have substantial experience as detailed below:

- ***Steven Panagos.*** Mr. Panagos is a turnaround expert with experience leading complex financial and operational restructurings for organizations across a spectrum of industries. He has served as an independent director to companies undergoing significant changes, including Silicon Valley Bank Financial Group, Barnes & Noble Education, Pier1 Imports, and American Consolidated Natural Resources. Mr. Panagos also spent a decade as Vice Chairman and Managing Director of the Recapitalization & Restructuring Group at Moelis & Company.

- ***Jeanne Manischewitz.*** Ms. Manischewitz has more than 28 years of experience in investment banking, asset management, and board governance. She is highly skilled in the areas of distressed debt investing including deal structuring, creditor rights, and bankruptcy processes. She has served on the board at Redwood Enhanced Income Corp, Graf Acquisition Corp II, Healthcare Services Acquisition Holdings, and the Museum of the City of New York. Ms. Manischewitz also spent over a decade as Partner and Head of North American Credit at York Capital Management.

56. On May 2, 2024, the Boards (a) appointed Mr. Panagos and Ms. Manischewitz to the Boards as disinterested directors, (b) established special committees of the Boards (the "Special Committees"), (c) appointed Mr. Panagos and Ms. Manischewitz as sole members of the Special Committees, and (d) delegated sole authority on all matters relating to consideration and negotiation of a restructuring, reorganization, or other transaction, including with respect to (i) matters in which a conflict of interest exists or is reasonably likely to exist (the "Conflict Matters") between Appgate, on the one hand, and any of its equityholders, affiliates, subsidiaries, directors, managers, and officers, or other stakeholders, on the other hand (each, a "Related Party"), (ii) whether any matter constitutes a conflict matter, and (iii) potential claims or causes of action of the Debtors.

4. The Special Committees' Independent Investigation

57. The Special Committees, with the support of Cole Schotz, the Debtors' co-counsel, has been conducting an independent investigation of the Conflict Matters since before the Petition Date (the "Independent Investigation"), including potential Claims that could be asserted by the Debtors' Estates with respect to such matters. In furtherance of the Independent Investigation, the

Special Committees ire reviewing and analyzing extensive diligence and information with respect to the Debtors' relationship with and transactions involving Related Parties.

58. The Debtors' *Joint Prepackaged Plan of Reorganization of Appgate, Inc. and Its Debtor Subsidiaries Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan")[2] [Docket No. 15] provides that the releases are subject to the Special Committees' Independent Investigation, which remains ongoing as of the Petition Date.

5. Pursuit of Strategic Alternatives.

59. In response to its prepetition challenges, the Company proactively pursued a number of strategic alternatives to address its liquidity challenges. This extensive process began in December 2021, when the Company hired Guggenheim and Jefferies as investment bankers to facilitate a secondary offering. Beginning in February 2022, the Company also engaged Guggenheim and Jefferies to launch formal marketing processes for the sale of some or all of the Company's assets. Over the next several months, Jefferies and Guggenheim engaged with more than 20 potential strategic buyers. Despite the Company and its advisors' best efforts to facilitate a successful sale, no actionable proposals were received as a result of these marketing processes. Likewise, by May 2022, the Company put its secondary offerings on hold due to adverse market conditions.

60. Thereafter, in July 2022, the Company engaged DBO Partners LLC ("DBO Partners") to conduct an initial outreach to certain potential strategic purchasers for the Company's fraud protection assets. Over the course of the next four months, DBO Partners engaged more

[2] Capitalized terms used but not defined in this Declaration shall have the meaning ascribed to such terms in the Plan.

than 30 potential purchasers, culminating in the submission of a non-binding letter of intent from one potential purchaser. After months of arm's length discussions with the potential purchaser, the Company ultimately elected not to move forward with the letter of intent.

61. Following the unfruitful marketing processes and without any near-term solution to its mounting operating losses, the Company was forced to include a going-concern qualification in its form 10-Q filed for the second quarter of fiscal year 2022. Specifically, the Company announced that it had generated significant operating losses and produced negative cash flows that further increased operational costs. The Company's operating expenses for the three months ending prior to June 30, 2022, was $28,655,000, which was a 60% increase from the same period in 2021. This increase in operating losses and the Company's inability to raise new capital led to substantial doubts that the Company could continue as a going concern, which in turn caused substantial worry among Appgate's customers (including certain government customers) about the viability of Appgate's business.

62. As mentioned previously, in October 2023, the Company hired Cantor as investment banker to launch a marketing process for a potential sale of all or substantially all of the Company's assets. Cantor reached out to approximately 130 potential financial and strategic buyers to gauge interest in acquiring some or all of the Company's equity interests. During this process, the Company signed approximately 35 non-disclosure agreements with potential purchasers, resulting in the Company receiving two "best and final" proposals. After review and evaluation of each proposal, the Company determined that such proposals were not actionable or value-maximizing for the Company or its stakeholders.

63. Additionally, in June 2023, while the 2023 marketing process was progressing, it became clear that the Company would need to extend the near-term maturities of its 1L Convertible

Notes and 3L RCF Loans, maturing on February 9, 2024, and June 30, 2023, respectively. On June 9, 2023, the Company successfully negotiated an extension of these maturity dates to February 9, 2026, and August 9, 2026, respectively. Although these extensions addressed the Debtors' impending maturity wall, they also came with additional terms that would ultimately prove difficult for the Debtors to satisfy—the most troublesome of which was a minimum liquidity covenant that was incorporated into the 1L Convertible NIA. Although the Company was initially able to comply with this requirement, it began having trouble maintaining the liquidity covenant beginning in December 2023. Consequently, the Company has been forced to seek weekly forbearances since that time as a result of an ongoing default of the minimum liquidity covenant in the 1L Convertible NIA.

64. As previously discussed, the 1L Convertible Noteholders have contributed new money a total of six times since January 2024 for a total incremental new money funding of $18,239,156 above the $86,914,906 that was previously outstanding under the Original 1L Convertible NIA in order to support the Company during this time. This period of insufficient liquidity and overleverage has made it difficult for the Company to singularly focus on running the business. Although these extensions and capital injections provided the Company with essential breathing room, it became abundantly clear that more comprehensive measures were needed in light of the Company's ongoing strained liquidity and a looming 2026 maturity wall. To that end, Appgate retained the Advisors to assist the Company with pursuing a recapitalization of its balance sheet through a chapter 11 filing and related contingency preparations. Specifically, the Company retained Kirkland and Cole Schotz as legal counsel on February 27, 2024, and April 16, 2024, respectively, and on March 28, 2024, the Company engaged Portage Point as financial advisor and investment banker.

65. Once retained, the Advisors immediately began engaging with the Prepetition Secured Lenders regarding the terms of a comprehensive, value-maximizing restructuring transaction that would delever the Company's balance sheet in full to allow the Company the breathing room required to focus on maximizing operational efficiencies and unlocking sustained profitable growth. These discussions were productive, ultimately leading to a fully consensual agreement between the Debtors and the Prepetition Secured Lenders regarding the terms of the recapitalization of the Company, the terms of which are embodied in the RSA.

a. Entry into the RSA.

66. The Company, with the assistance of its Advisors, worked around the clock with the Consenting Stakeholders to negotiate and document the RSA and obtain a commitment on financing necessary to continue to fund operations prior to the filing of these Chapter 11 Cases. On May 3, 2024, after good faith, arms'-length negotiations with the Prepetition Secured Lenders, the Debtors reached an agreement with the 1L Convertible Noteholders holding 100% of the outstanding 1L Convertible Notes Claims, the 2L Convertible Noteholders holding 100% of the outstanding 2L Convertible Notes Claims, the 3L RCF Lender holding 100% of the outstanding 3L RCF Claims, and the Consenting Equityholders holding approximately 89% of outstanding Equity Interests on the terms of the RSA attached hereto as **Exhibit B**. The RSA details the Restructuring Transactions to be implemented by the Plan, including a complete equitization of the DIP Facility, the 1L Convertible Notes, and the 2L Convertible Notes, as well as the cancellation of the 3L RCF Loans and the existing Equity Interests in Appgate, Inc.

67. The Debtors believe that the Restructuring Transactions contemplated under the RSA and as memorialized in the Plan present the Debtors with a viable path forward to maximize

value for all stakeholders, and that the Restructuring Transactions will position Appgate for long-term success and profitability.

68. On May 3, 2024, Appgate launched solicitation of votes on the Plan by distributing a solicitation cover letter, the Disclosure Statement, the Plan, and ballots to Holders of Claims entitled to vote on the Plan.[2]

69. By May 4, 2024, the Plan was unanimously accepted by all Holders of Claims entitled to vote on the Plan, as reflected in the below summary of voting results,[3] and on May 6, 2024, the Debtors filed these Chapter 11 Cases to implement the Restructuring Transactions through the Plan.

Total Ballots Received			
Accept		**Reject**	
Number (*% of Number*)	**Amount (*% of Amount*)**	**Number (*% of Number*)**	**Amount (*% of Amount*)**
Class 3 – 1L Convertible Notes Claims			
9 (*100%*)	$96,845,795 (*100%*)	0 (*0%*)	$0 (*0%*)
Class 4 – 2L Convertible Notes Claims			
1 (*100%*)	$8,825,005 (*100%*)	0 (*0%*)	$0 (*0%*)

6. Proposed Timeline for These Chapter 11 Cases.

70. Under the RSA and the DIP Facility, the Debtors agreed to certain case milestones to ensure an orderly and timely implementation of the Restructuring Transactions. It is imperative

[2] The Debtors' solicitation process is discussed in greater detail in the contemporaneously-filed *Debtors' Motion for Entry of an Order (I) Scheduling Approval and Plan Confirmation Hearing, (II) Approving Related Dates, Notices, and Procedures, (III) Approving The Solicitation Procedures and Related Dates, Deadlines, and Notices, (IV) Conditionally Waiving The Requirements that (A) The U.S. Trustee Convenes a Meeting of Creditors and (B) The Debtors File Schedules and SOFAs and Rule 2015.3 Financial Reports, and (V) Granting Related Relief*.

[3] *See* the contemporaneously-filed *Declaration of Lisa C, Terry Regarding The Solicitation and Tabulation of Votes on The Joint Prepackaged Plan of Reorganization of Appgate, Inc. and Its Debtor Subsidiaries Pursuant to Chapter 11 of the Bankruptcy Code*.

that the Debtors proceed swiftly to confirmation of the Plan and emergence from these Chapter 11 Cases to mitigate uncertainty among employees, customers, and vendors, minimize disruptions to the Company's business, and curtail professional fees and administrative costs. I believe that expeditious confirmation of the Plan and consummation of the Restructuring Transactions is in the best interests of the Debtors, their Estates, and their stakeholders.

71. Pursuant to the agreed-upon milestones with the Consenting Stakeholders, the Debtors must obtain Confirmation of the Plan within 43 days of the Petition Date. Accordingly, the Debtors have proposed the following key case dates, subject to Court approval and availability:

Event	Date
Voting Record Date[4]	April 30, 2024
Solicitation Commencement Date	May 3, 2024
Voting Deadline[5]	May 5, 2024, at 12:00 p.m., prevailing Eastern Time
Petition Date	May 6, 2024
Service of the Combined Hearing Notice	As soon as practicable following approval of the Combined Hearing Notice
Plan Supplement Deadline	May 31, 2024
Objection Deadline and Opt-Out Deadline	June 7, 2024, at 4:00 p.m., prevailing Eastern Time
Deadline to File Confirmation Brief and Reply	June 14, 2024, at 12:00 p.m., prevailing Eastern Time
Combined Hearing	June 18, 2024, subject to Court availability

72. The Plan has been accepted by all impaired creditors entitled to vote that submitted ballots, and the Debtors will provide appropriate notice to all parties in interest in accordance with

[4] The "Voting Record Date" is the date as of which a Holder of record of a Claim in Class 3 or Class 4 (collectively, the "Voting Classes") must have held such Claim to cast a vote to accept or reject the Plan.

[5] The Debtors submit that Local Rule 3017-2(c) is not applicable here because the Debtors solicited and tabulated votes to accept or reject the Plan prior to the Petition Date.

applicable bankruptcy rules and any order of this Court such that they will have had ample notice of and opportunity to participate in these Chapter 11 Cases.

7. Proposed DIP Financing.

73. During these Chapter 11 Cases, the Debtors will need to use the cash generated from their operations, as well as their current cash on hand, to, among other things, (a) satisfy payroll obligations, (b) honor all obligations under their customer contracts, (c) maintain insurance coverage, (d) pay taxes, and (e) make any other payments essential to the continued management, operation, and preservation of the Debtors' business. Such cash on hand, however, is insufficient to meet the Debtors' liquidity needs. Accordingly, the Debtors seek authority to use their Cash Collateral and obtain an $18 million senior secured, superpriority debtor-in-possession financing facility (the "DIP Facility") to fund operations during these Chapter 11 Cases and otherwise provide for general corporate needs.

74. As laid out more fully in the *Declaration of Adam Waldman in Support of the Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Hearing Final Hearing, and (VI) Granting Related Relief* (the "Waldman Declaration") [Docket No. 18], the DIP Facility is the culmination of extensive prepetition, arms-length negotiations between the Debtors, on the one hand, and the DIP Lenders, on the other hand, and is the best and only actionable proposal that the Debtors received. *See* Waldman Decl. ¶ 12. Notably, pursuant to the Plan and subject to Court approval, the DIP Facility will be fully equitized upon emergence. I believe that the terms of the DIP Facility are fair and appropriate under the circumstances and is in the best interest of the Debtors' Estates.

75. The transactions contemplated by the RSA and the Plan will position Appgate for long-term success and will ensure that its customers and vendors have a financially sound go-forward business partner. After an extensive review process, the Debtors have determined that the transactions set forth in the RSA and the Plan present the Debtors with a viable path forward to maximize value for all stakeholders.

IV. Evidentiary Basis for Relief Requested in the First Day Motions.

76. Contemporaneously with the filing of this Declaration, the Debtors have filed a number of First Day Motions seeking relief to minimize the adverse effects of the commencement of these Chapter 11 Cases on their business and to ensure that their reorganization strategy can be implemented with limited disruptions to operations. Approval of the relief requested in the First Day Motions is critical to the Debtors' ability to continue operating their business with minimal disruption and thereby preserving value for the Debtors' Estates and various stakeholders. I have reviewed each of the First Day Motions and I believe that the relief sought therein is necessary to permit an effective transition into chapter 11. I believe that the Debtors' Estates would suffer immediate and irreparable harm absent the ability to make certain essential payments, and otherwise continue their business operations as sought in the First Day Motions. The evidentiary support for the First Day Motions is set forth on **Exhibit C** attached hereto. Accordingly, for the reasons set forth herein and in the First Day Motions, the Court should grant the relief requested in each of the First Day Motions.

* * * * * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 6, 2024

By: /s/ Rene Rodriguez
Name: Rene Rodriguez
Title: Chief Financial Officer

Exhibit A

The Debtors

1. Appgate, Inc.
2. Appgate Cybersecurity, Inc.
3. Catbird Networks, Inc.
4. Cryptzone Worldwide, Inc.
5. Cryptzone International Holdings Inc.
6. Cryptzone North America Inc.
7. Easy Solutions Enterprises Corp.
8. Easy Solutions, Inc.
9. Immunity, Inc.
10. Immunity Federal Services, LLC
11. Immunity Products, LLC
12. Immunity Services, LLC

Exhibit B

RSA

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 16.02, this "**Agreement**") is made and entered into as of May 3, 2024 (the "**Execution Date**"), by and among the following parties (each of the following described in sub-clauses (i) through (v) of this preamble, collectively, the "**Parties**"):[1]

i. Appgate, Inc., a company incorporated under the Laws of Delaware ("**Appgate**"), and each of its Affiliates listed on **Exhibit A** to this Agreement that have executed and delivered counterpart signature pages to this Agreement to counsel to the Consenting Stakeholders (the Entities in this clause (i), collectively, the "**Company Parties**");

ii. the undersigned Holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, 1L Convertible Notes Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (ii), collectively, the "**Consenting 1L Convertible Noteholders**");

iii. the undersigned Holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, 2L Convertible Notes Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (iii), collectively, the "**Consenting 2L Convertible Noteholders**");

iv. the undersigned Holder of 3L RCF Claims that has executed and delivered a counterpart signature page to this Agreement to counsel to the Company Parties (the Entity in this clause (iv), the "**Consenting 3L RCF Lender**," and together with the other Entities in clause (ii) through clause (iv), the "**Consenting Lenders**"); and

[1] Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1.

v. certain undersigned Holders of outstanding Equity Interests (collectively, the "**Consenting Equityholders**," and together with the Consenting Lenders, the "**Consenting Stakeholders**").

RECITALS

WHEREAS, the Company Parties and the Consenting Stakeholders have in good faith and at arms' length negotiated or been apprised of certain restructuring and recapitalization transactions with respect to the Company Parties' capital structure on the terms set forth in this Agreement and as specified in the term sheet attached as **Exhibit B** hereto (the "**Restructuring Term Sheet**" and, such transactions as described in this Agreement and the Restructuring Term Sheet, the "**Restructuring Transactions**");

WHEREAS, the Company Parties intend to implement the Restructuring Transactions, including through the commencement by the Debtors of voluntary prepackaged cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the cases commenced, the "**Chapter 11 Cases**"); and

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement, the attached Definitive Documents, and the Restructuring Term Sheet;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Definitions and Interpretation.***

1.01. Definitions. The following terms shall have the following definitions:

"**1L Convertible Noteholders**" means the Holders from time to time party to the 1L Convertible NIA.

"**1L Convertible Notes**" means the convertible notes issued and outstanding pursuant to the 1L Convertible NIA.

"**1L Convertible Notes Agent**" means U.S. Bank Trust Company, National Association, or any assign or successor thereto in its capacity as collateral agent under the 1L Convertible NIA.

"**1L Convertible Notes Claims**" means any Claim arising on account of the 1L Convertible Notes.

"**1L Convertible NIA**" means that certain amended and restated convertible notes issuance agreement, dated as of June 9, 2023, by and among Appgate Cybersecurity, Inc., as issuer, Appgate, Inc., as parent, the guarantors party thereto, Magnetar Financial LLC, as representative

of the Holders, and U.S. Bank Trust Company, National Association, as collateral agent, as amended, restated, modified, or supplemented from time to time.

"**1L Convertible Notes PIK Interest**" means the 8.5% interest earned on each 1L Convertible Note which is paid in kind by adding such amounts to the aggregate outstanding balance of such 1L Convertible Notes.

"**2L Convertible Noteholders**" means the Holders from time to time party to the 2L Convertible NIA.

"**2L Convertible Notes**" means the loans outstanding under the 2L Convertible NIA.

"**2L Convertible Notes Agent**" means Appgate Funding, LLC or any assign or successor thereto in its capacity as collateral agent under the 2L Convertible NIA.

"**2L Convertible Notes Claims**" means any Claim arising on account of the 2L Convertible Notes.

"**2L Convertible NIA**" means that certain convertible notes issuance agreement dated as of July 20, 2023, by and among Appgate Cybersecurity, Inc., as borrower, Appgate, Inc., as parent, the guarantors party thereto, and Appgate Funding, LLC as representative of the Holders and as collateral agent, as amended, modified, or supplemented from time to time.

"**3L RCF Claims**" means Claims arising on account of the 3L RCF Loans.

"**3L RCF Credit Agreement**" means that certain amended and restated credit agreement dated as of June 9, 2023, by and among Appgate Cybersecurity, Inc., as borrower, Appgate, Inc., as parent, the guarantors party thereto, and SIS Holdings, L.P., as lender, as amended, modified, or supplemented from time to time.

"**3L RCF Lender**" means the lender from time to time party to the 3L RCF Credit Agreement.

"**3L RCF Loans**" means the loans outstanding under the 3L RCF Credit Agreement.

"**Affiliate**" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.

"**Agent**" means any administrative agent, escrow agent, collateral agent, or similar Entity under the 1L Convertible Notes, the 2L Convertible Notes, the 3L RCF Loans, and/or the DIP Facility, including any successors thereto.

"**Agents/Trustees**" means, collectively, each of the Agents and Trustees.

"**Agreement**" has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 16.02 (including the Restructuring Term Sheet).

"**Agreement Effective Date**" means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

"**Agreement Effective Period**" means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

"**Alternative Restructuring Proposal**" means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Company Parties or the debt, equity, or other interests in any one or more Company Parties that is an alternative to one or more of the Restructuring Transactions.

"**Appgate**" has the meaning set forth in the preamble of this Agreement.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time.

"**Bankruptcy Court**" means the United States Bankruptcy Court in which the Chapter 11 Cases are commenced or another United States Bankruptcy Court with jurisdiction over the Chapter 11 Cases.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

"**Business Day**" means any day other than a Saturday, Sunday, "legal holiday" (as defined in Bankruptcy Rule 9006(a)) or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"**Cash Collateral**" has the meaning set forth in section 363(a) of the Bankruptcy Code.

"**Causes of Action**" means, collectively, any and all Claims, Equity Interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, avoidance actions, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Equity Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

"**Chapter 11 Cases**" has the meaning set forth in the recitals to this Agreement.

"**Claim**" has the meaning set forth in section 101(5) of the Bankruptcy Code.

"**Company Claims/Equity Interests**" means any Claim against, or Equity Interest in, a Company Party, including, without limitation, the 1L Convertible Notes Claims, the 2L Convertible Notes Claims, and the 3L RCF Claims.

"**Company Parties**" has the meaning set forth in the preamble to this Agreement.

"**Confidentiality Agreement**" means an executed confidentiality agreement, including with respect to the issuance of a "cleansing letter" or other public disclosure of material non-public information agreement, in connection with any proposed Restructuring Transactions.

"**Confirmation Order**" means an order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

"**Consenting 1L Convertible Noteholders**" has the meaning set forth in the preamble to this Agreement.

"**Consenting 2L Convertible Noteholders**" has the meaning set forth in the preamble to this Agreement.

"**Consenting 3L RCF Lender**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Equityholders**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Lenders**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Stakeholders**" has the meaning set forth in the preamble to this Agreement.

"**Corporate Governance Documents**" means, collectively and as applicable, the organizational and governance documents for New Appgate Holdings, the Company Parties, and their respective direct and indirect subsidiaries, giving effect to the Restructuring Transactions, including, but not limited to, the New Limited Liability Company Agreement and any other charters, bylaws, certificates of incorporation, certificates of formation, limited liability company agreements, operating agreements, or other organizational documents or shareholders' agreements, each consistent with the terms and conditions as set forth in the Restructuring Term Sheet.

"**Debtors**" means the Company Parties that commence Chapter 11 Cases.

"**Definitive Documents**" means, collectively, each of the documents listed in Section 3.01 of this Agreement.

"**DIP Agent**" means the administrative agent and collateral agent under the DIP Credit Agreement and its successors, assigns, or any replacement agent appointed pursuant to the terms of the DIP Facility.

"**DIP Claims**" means any Claim arising on account of the DIP Facility.

"**DIP Credit Agreement**" means the debtor-in-possession financing credit agreement by and among certain Company Parties, the DIP Agent, and the DIP Lenders setting forth the terms and conditions of the DIP Facility, attached hereto as **Exhibit C**.

"**DIP Facility**" means the $18 million senior secured superpriority debtor-in-possession financing facility to be provided to the Debtors on the terms and conditions set forth in the DIP Credit Agreement attached hereto as **Exhibit C**, the DIP Orders, and on other terms and conditions to be agreed upon by the Debtors and the DIP Lenders consistent with the DIP Credit Agreement.

"**DIP Lenders**" means the lenders party to the DIP Credit Agreement.

"**DIP Loans**" means all loans to be provided by the DIP Lenders under the DIP Facility.

"**DIP Orders**" means any order entered in the Chapter 11 Cases approving the DIP Facility (whether interim or final) consistent with the DIP Credit Agreement.

"**Disclosure Statement**" means that certain disclosure statement disclosing the terms and conditions of the Plan, as may be amended, supplemented, or otherwise modified from time to time in accordance with the terms of this Agreement and in accordance with, among other things, applicable securities Law, sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable Law.

"**Entity**" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"**Equity Interest**" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Company Party (regardless of whether such interests are held directly or indirectly), and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Company Party (in each case whether or not arising under or in connection with any employment agreement and regardless of whether such interests are held directly or indirectly).

"**Execution Date**" has the meaning set forth in the preamble to this Agreement.

"**First Day Pleadings**" means the first-day pleadings that the Debtors determine are necessary or desirable to file, which shall be in form and substance reasonably acceptable to the Required Consenting 1L Convertible Noteholders, the Required Consenting 2L Convertible Noteholders, and the Debtors.

"**General Unsecured Claim**" means any unsecured Claim against any of the Debtors.

"**Holder**" means an Entity that is the record owner of a Claim or Equity Interest. For the avoidance of doubt, affiliated record owners of Claims or Equity Interests managed or advised by the same institution shall constitute separate Holders.

"**Intercompany Claim**" means any Claim against a Company Party held by another Company Party.

"**Intercompany Equity Interest**" means any Equity Interest in a Company Party held by another Company Party.

"**Joinder**" means a joinder to this Agreement substantially in the form attached to this Agreement as **Exhibit G**.

"**Law**" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

"**New Appgate Holdings**" means a new corporation, limited liability company, partnership, or other Entity that may be formed, or any Entity designated by the Debtors, in connection with the implementation of the Restructuring Transaction and in accordance with the Restructuring Transactions Memorandum, which in any case shall be the ultimate parent of the Company Parties on and after the Plan Effective Date.

"**New Board**" means the new board of directors or similar governing body of New Appgate Holdings.

"**New Limited Liability Company Agreement**" means that certain Amended and Restated Limited Liability Company Agreement of New Appgate Holdings substantially in the form attached hereto as **Exhibit D**.

"**Other Priority Claim**" means any Claim, other than an administrative claim or a priority tax claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

"**Other Secured Claim**" means: (a) a Claim secured by a lien on any assets of the Debtors, which lien is valid, perfected, and enforceable under applicable Law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, and which is duly established in the Chapter 11 Cases, but only to the extent of the value of the Holder's interest in the collateral that secures payment of the Claim; (b) a Claim against the Debtors that is subject to a valid right of recoupment or setoff under section 553 of the Bankruptcy Code, but only to the extent of the allowed amount subject to recoupment or setoff as provided in section 506(a) of the Bankruptcy Code; and/or (c) a Claim deemed or treated under the Plan or separate order of the Bankruptcy Court as a secured Claim.

"**Parties**" has the meaning set forth in the preamble to this Agreement.

"**Permitted Transferee**" means each transferee of any Company Claims/Equity Interests who meets the requirements of Section 9.01.

"**Petition Date**" means the first date any of the Debtors commences a Chapter 11 Case.

"**Plan**" means the plan of reorganization that will be filed by the Debtors under chapter 11 of the Bankruptcy Code to implement the Restructuring Transactions in accordance with, and subject to the terms and conditions of, this Agreement, the Restructuring Term Sheet, the Definitive Documents, and related exhibits, substantially in the form attached to this Agreement as **Exhibit E**.

"**Plan Effective Date**" means occurrence of the effective date of the Plan according to its terms.

"**Plan Supplement**" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan that will be filed by the Debtors with the Bankruptcy Court.

"**Qualified Marketmaker**" means an Entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Company Claims/Equity Interests (or enter with customers into long and short positions in Company Claims/Equity Interests), in its capacity as a dealer or market maker in Company Claims/Equity Interests and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

"**Reorganized Debtors**" means the Debtors as reorganized under the Plan, or any successor or assign thereto, by transfer, merger, consolidation, or otherwise.

"**Required Consenting 1L Convertible Noteholders**" means, as of the relevant date, the Consenting 1L Convertible Noteholders holding at least 50.01% of the aggregate outstanding principal amount of 1L Convertible Notes Claims that are held by Consenting 1L Convertible Noteholders.

"**Required Consenting 2L Convertible Noteholders**" means, as of the relevant date, the Consenting 2L Convertible Noteholders holding at least 50.01% of the aggregate outstanding principal amount of 2L Convertible Notes Claims that are held by Consenting 2L Convertible Noteholders.

"**Required Consenting Stakeholders**" means the Required Consenting 1L Convertible Noteholders, the Required Consenting 2L Convertible Noteholders, the Consenting 3L RCF Lender, and the Consenting Equityholders.

"**Restructuring Term Sheet**" has the meaning set forth in the recitals to this Agreement.

"**Restructuring Transactions**" has the meaning set forth in the recitals to this Agreement.

"**Restructuring Transactions Memorandum**" means the description of the steps to be carried out to effectuate the Restructuring Transactions in accordance with the Plan and as set forth in the Plan Supplement. The Restructuring Transactions Memorandum shall, among other things, specify the Entity that will issue new equity interests.

"**Rules**" means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

"**Secured Claim**" means a Claim: (a) secured by a valid, perfected, and enforceable lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Solicitation**" means the solicitation of votes in favor of the Plan.

"**Solicitation Materials**" means, collectively, all documents, forms, and other materials provided in connection with the solicitation of votes on the Plan pursuant to sections 1125 and 1126 of the Bankruptcy Code, including but not limited to the Disclosure Statement; which Solicitation Materials shall be consistent with this Agreement and in form and substance reasonably acceptable to the Required Consenting 1L Convertible Noteholders, the Required Consenting 2L Convertible Noteholders, the Debtors, and, to the extent required by Section 3.02, the Consenting 3L RCF Lender and Consenting Equityholders.

"**Termination Date**" means the date on which termination of this Agreement as to a Party is effective in accordance with Sections 12.01, 12.02, 12.03, 12.04, or 12.05.

"**Transfer**" means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate, or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales, or other transactions).

"**Transfer Agreement**" means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement, substantially in the form attached hereto as **Exhibit F**.

"**Trustee**" means any indenture trustee, collateral trustee, or other trustee or similar Entity under the 1L Convertible Notes, the 2L Convertible Notes, the 3L RCF Loans, and/or the DIP Facility, including any successors thereto.

"**Unimpaired**" means, with respect to a class of Claims or Equity Interests, a class of Claims or Equity Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

"**Voting Deadline**" means the deadline for ballots to be completed, executed, and returned so that they are actually received by Donlin, Recano & Company, Inc. prior to 12:00 p.m. prevailing Eastern Time, on May 5, 2024.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(f) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of "include" or "including" is without limitation, whether stated or not; and

(j) the phrase "counsel to the Consenting Stakeholders" refers in this Agreement to each counsel specified in Section 16.10 other than counsel to the Company Parties.

Section 2. ***Effectiveness of this Agreement.*** This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Standard Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties and the Consenting Equityholders shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(b) the following shall have executed and delivered counterpart signature pages of this Agreement to its respective counsel:

(i) Holders of one hundred percent of the aggregate outstanding principal amount of 1L Convertible Notes;

(ii) Holders of one hundred percent of the aggregate outstanding principal amount of 2L Convertible Notes; and

(iii) Holders of one hundred percent of the aggregate outstanding principal amount of the 3L RCF Loans; and

(c) counsel to the Company Parties shall have given notice to counsel to the Consenting Stakeholders in the manner set forth in Section 16.10 hereof (by email or otherwise) that the other conditions to the Agreement Effective Date set forth in this Section 2(a) have occurred.

Section 3. ***Definitive Documents.***

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following (and any modifications, amendments, or supplements thereto, each in form and substance reasonably acceptable to the Company Parties and the other applicable parties under Section 3.02): (a) the Plan; (b) the Confirmation Order; (c) the Disclosure Statement; (d) the order of the Bankruptcy Court approving the Disclosure Statement and the other Solicitation Materials; (e) the First Day Pleadings and all orders sought pursuant thereto; (f) the Plan Supplement; (g) the New Limited Liability Company Agreement; (h) the Restructuring Term Sheet; and (i) all other agreements, instruments, pleadings, orders, forms, questionnaires, and other documents (including all exhibits, schedules, supplements, appendices, annexes, instructions, and attachments thereto) that are utilized to implement or effectuate, or that otherwise relate to, the Restructuring Transactions, including each of the Definitive Documents enumerated in the Plan.

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement and the Restructuring Term Sheet, as they may be modified, amended, or supplemented in accordance with Section 14. Further, the Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date and any modifications, amendments, or supplements thereto shall otherwise be in form and substance reasonably acceptable to the Company Parties, the Required Consenting 1L Convertible Noteholders, the Required Consenting 2L Convertible Noteholders, and to the extent relating to (a) the reasonable and documented out-of-pocket fees, costs, expenses, and disbursements of the Consenting Stakeholders or (b) the release, exculpation, and/or injunctive provisions of the Plan and/or the Confirmation Order and/or directors and officers insurance or indemnification of the Debtors' directors and officers, the Consenting 3L RCF Lender and the Consenting Equityholders; provided that the form of the New Limited Liability Company Agreement attached hereto as **Exhibit D** may be modified without the consent of the Consenting 2L Convertible Noteholders unless such modification relates to the rights of the Consenting 2L Convertible Noteholders thereunder.

Section 4. ***Milestones.***

4.01. The following milestones (each, a "Milestone," and collectively, the "Milestones") shall apply to this Agreement unless extended or waived in writing (e-mail being sufficient) by the Required Consenting 1L Convertible Noteholders:

(a) no later than one Business Day prior to the Petition Date, the Debtors shall commence the Solicitation;

(b) no later than four Business Days following the Agreement Effective Date, the Petition Date shall have occurred;

(c) no later than forty-three calendar days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order and an order approving the Disclosure Statement; and

(d) no later than forty-five calendar days after the Petition Date (the "**Outside Date**"), the Plan Effective Date shall have occurred.

Section 5. ***Commitments of the Consenting Stakeholders.***

5.01. General Commitments, Forbearances, and Waivers.

(a) During the Agreement Effective Period, each Consenting Stakeholder agrees, in respect of all of its Company Claims/Equity Interests, to:

(i) support the Restructuring Transactions and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions;

(ii) use commercially reasonable efforts to cooperate with and assist the Company Parties in obtaining additional support for the Restructuring Transactions from the Company Parties' other stakeholders;

(iii) use commercially reasonable efforts to oppose any party or person from taking any actions contemplated in Section 5.02(b);

(iv) give any notice, order, instruction, or direction to the applicable Agents/Trustees necessary to give effect to the Restructuring Transactions;

(v) negotiate in good faith and use commercially reasonable efforts to execute and implement the Definitive Documents that are consistent with this Agreement to which it is required to be a party;

(vi) agree that on the Plan Effective Date, except to the extent otherwise provided in this RSA, the Plan, or other Definitive Documents, as applicable, all notes, instruments, certificates, and other documents evidencing Claims (other than those that are

reinstated) or Equity Interests in Appgate, including credit agreements and note purchase agreements, shall be cancelled, and all present and future obligations and liabilities, actions, suits, accounts or demands, covenants and indemnities (both actual and contingent) under or in connection with the 1L Convertible NIA, 2L Convertible NIA, and the 3L RCF Credit Agreement of the Debtors or the Reorganized Debtors, as applicable, and any non-Debtor Affiliates thereunder or in any way related thereto, shall be deemed satisfied in full, cancelled, discharged, and of no force or effect, and the Agents/Trustees shall be released from all duties and obligations thereunder (such release to be without prejudice to any actions as may be reasonably requested of the Agents/Trustees pursuant to sub-paragraph (ix) below);

(vii) agree that on the Plan Effective Date or as soon as reasonably practicable thereafter, each Holder (and the applicable Agents for such Holder including the Agents/Trustees) of a certificate or instrument evidencing a Claim or an Equity Interest that has been cancelled shall be deemed to have surrendered such certificate or instrument. Such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and any non-Debtor Affiliates, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties (other than the non-Debtor Affiliates) in respect of one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Equity Interest, which all continue in effect for the purposes of allowing Holders to receive distributions under the Plan, charging liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary in the Plan, the foregoing shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan;

(viii) agree that on the Plan Effective Date, any power of attorney and every power and authority conferred on each Holder (and the applicable Agents for such Holder, including the Agents/Trustees) pursuant to the any collateral or other property of any Debtor or non-Debtor Affiliate (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable Agents for such Holder, including the Agents/Trustees) are hereby revoked and terminated; and

(ix) agree that except as otherwise provided in the Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Plan Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim or any related claim that may be asserted against a non-Debtor Affiliate, in satisfaction in full of the portion of the Secured Claim that is allowed as of the Plan Effective Date, except for Other Secured Claims that the Debtors elect to reinstate in accordance with the Plan, all mortgages, deeds of trust, liens, pledges, or other security interests against any property of the estates or any non-Debtor Affiliate shall be fully released and discharged, and all of the right, benefit, title, and interest of any Holder (and the applicable Agents for such Holder, including the Agents/Trustees) of such mortgages, deeds of trust, liens, pledges, or other security interests shall revert and, as applicable, be reassigned, surrendered, reconveyed, or retransferred to the Reorganized Debtors and their successors and assigns. Any Holder of such Secured Claim or claim against a non-Debtor Affiliate (and the applicable agents for such Holder, including the Agents/Trustees) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor or non-Debtor Affiliate (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder, including the Agents/Trustees) and to take such actions as may

be reasonably requested by the Reorganized Debtors to evidence the release of such lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such liens.

(b) During the Agreement Effective Period, each Consenting Stakeholder agrees, in respect of all of its Company Claims/Equity Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(ii) propose, file, support, or vote for any Alternative Restructuring Proposal;

(iii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 11 Cases, this Agreement, or the other Restructuring Transactions contemplated herein against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(v) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any of Claims against or Equity Interests in the Company Parties; including, for the avoidance of doubt, as a result of a breach by any Company Party, and/or any Default or Event of Default (as defined in the applicable governing document) under, the 1L Convertible NIA, the 2L Convertible NIA, and/or the 3L RCF Credit Agreement, and/or any other document entered into in connection therewith;

(vi) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code; or

(vii) encourage or facilitate any person or Entity to do any of the actions described in the foregoing Section 5.01(b)(i) through Section 5.01(b)(vi).

5.02. Commitments with Respect to Chapter 11 Cases.

(a) During the Agreement Effective Period, each Consenting Stakeholder that is entitled to vote to accept or reject the Plan pursuant to its terms agrees that it shall, subject to receipt by such Consenting Stakeholder, whether before or after the commencement of the Chapter 11 Cases, of the Solicitation Materials:

(i) vote each of its Company Claims/Equity Interests to accept the Plan by delivering its duly executed and completed ballot accepting the Plan on a timely basis following the commencement of the solicitation of the Plan and its actual receipt of the Solicitation Materials and the ballot;

(ii) consent to (and opt-in, if applicable) all of the releases contained in the Plan and not make an election to opt-out of any such releases;

(iii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clauses (i) and (ii) above.

(b) During the Agreement Effective Period, each Consenting Stakeholder, in respect of each of its Company Claims/Equity Interests, will support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with any motion or other pleading or document filed by a Debtor in the Bankruptcy Court that is consistent with this Agreement.

Section 6. ***Additional Provisions Regarding the Consenting Stakeholders' Commitments.*** Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Stakeholder to consult with any other Consenting Stakeholder, the Company Parties, or any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee); (b) impair or waive the rights of any Consenting Stakeholder to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; and (c) prevent any Consenting Stakeholder from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 7. ***Commitments of the Company Parties.***

7.01. Affirmative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, the Company Parties agree to:

(a) commence Solicitation no later than one Business Day prior to the Petition Date;

(b) upon the commencement of Solicitation, not withdraw or modify the terms the Solicitation Materials, prior to the Voting Deadline, without the prior written consent (e-mail being sufficient) of the applicable parties whose consent is required under Section 3 hereof (not to be unreasonably withheld);

(c) support and take all steps reasonably necessary and desirable to consummate the Restructuring Transactions in accordance with this Agreement and the Definitive Documents no later than the Outside Date;

(d) use commercially reasonable efforts to comply with the Milestones set forth in Section 4.01 of this Agreement (as may be extended by written agreement of the Company Parties and Required Consenting 1L Convertible Noteholders) (e-mail being sufficient);

(e) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment;

(f) use commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals necessary to implement and/or consummate the Restructuring Transactions;

(g) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents (consistent with this Agreement) and any other required agreements to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(h) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from their other material stakeholders to the extent reasonably prudent;

(i) consult in good faith with the Consenting 1L Convertible Noteholders prior to the Company Parties' entry into, termination of, or modification of, any material operational contracts, leases, or other arrangements (including, for the avoidance of doubt, executive compensation arrangements or executive employment agreements);

(j) act in good faith to respond to the reasonable diligence requests of the Consenting 1L Convertible Noteholders during the Agreement Effective Period and shall cause their relevant management and advisors to meet with the Consenting 1L Convertible Noteholders and their representatives and advisors upon reasonable request and reasonable advance notice and without disruption to the operation of the Company Parties' business;

(k) from the date hereof until the Plan Effective Date, (i) operate their business in the ordinary course in a manner that is consistent with past practice, as applicable and appropriate, and this Agreement, and use commercially reasonable efforts to preserve intact the Company Parties' business organization and relationships with third parties and employees (which shall not prohibit the Company Parties from taking actions outside of the ordinary course of business with the consent of the Required Consenting 1L Convertible Noteholders (not to be unreasonably withheld)), taking into account the Restructuring Transactions; and (ii) operate the business in the ordinary course, in a manner consistent with applicable law and actions taken by similarly situated companies in the industry in which the Company Parties operate, and maintain good standing (or equivalent status under the laws of its incorporation or organization) under the laws of the jurisdiction in which the Company Parties are incorporated or organized, taking into account the Restructuring Transactions, including those changes resulting from the events leading up to, or in connection with, the commencement of the Chapter 11 Cases and the continuation and prosecution thereto, including circumstances or conditions customarily resulting from such events, commencements, continuation, and prosecution;

(l) notify counsel to the Consenting 1L Convertible Noteholders and the Consenting 2L Convertible Noteholders within one calendar day after obtaining actual knowledge thereof of the happening or existence of any event that shall have made any part of the Restructuring Transactions (including the Plan and the Restructuring Term Sheet) incapable of being consummated on or prior to the Outside Date; and

(m) (i) provide counsel for the Consenting 1L Convertible Noteholders and the Consenting 2L Convertible Noteholders a period of at least two Business Days, to review draft copies of all First Day Pleadings and all other Definitive Documents that the Debtors intend to file with the Bankruptcy Court on the Petition Date and, (ii) to the extent reasonably practicable, provide a period of at least two Business Days to counsel to the Consenting 1L Convertible

Noteholders and the Consenting 2L Convertible Noteholders to review draft copies of other material documents that the Debtors intend to file with Bankruptcy Court, as applicable.

7.02. Negative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) enter into any other transaction support agreement related to a partial or total restructuring of the Company Parties' obligations unless such support agreement is not inconsistent with this Agreement and is in form and substance reasonably acceptable to the Required Consenting Stakeholders;

(c) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation and consummation of the Restructuring Transactions described in, this Agreement or the Plan;

(d) modify the Plan, in whole or in part, in a manner that is not consistent with this Agreement in all material respects;

(e) file any motion, pleading, or Definitive Document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(f) enter into, terminate, or modify any material operational contracts, leases, or other arrangements that would, individually or in the aggregate, reasonably be expected to have a material and adverse effect on the Company Parties, taken as a whole, without the prior consent of the Required Consenting 1L Convertible Noteholders (not to be unreasonably withheld); or

(g) encourage or facilitate any person or Entity to do any of the actions described in the foregoing Section 7.02(a) through Section 7.02(f).

Section 8. ***Additional Provisions Regarding Company Parties' Commitments.***

8.01. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require a Company Party or the board of directors, board of managers, or similar governing body of a Company Party, upon the advice of external counsel, to take any action or to refrain from taking any action with respect to the Restructuring Transactions to the extent taking or failing to take such action would be inconsistent with applicable Law or its fiduciary obligations under applicable Law, and any such action or inaction pursuant to this Section 8.01 shall not be deemed to constitute a breach of this Agreement; provided that no such action or inaction shall be deemed to prevent any of the Consenting Stakeholders from taking actions that they are permitted to take as a result of such action or inaction by a Company Party, including termination of their obligations hereunder to the extent permitted by this Agreement.

8.02. Notwithstanding anything to the contrary in this Agreement (but subject to Section 8.01), each Company Party and their respective directors, officers, employees, investment

bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the rights to: (a) consider, respond to, and facilitate Alternative Restructuring Proposals; (b) provide access to non-public information concerning any Company Party to any Entity or enter into Confidentiality Agreements or nondisclosure agreements with any Entity; (c) maintain or continue discussions or negotiations with respect to Alternative Restructuring Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals; and (e) enter into or continue discussions or negotiations with Holders of Claims against or Equity Interests in a Company Party (including any Consenting Stakeholder), any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee), or any other Entity regarding the Restructuring Transactions or Alternative Restructuring Proposals; provided that if a Company Party receives any Alternative Restructuring Proposal, then the Company Party shall (a) within one Business Day of receiving such proposal, provide counsel to each of the Consenting 1L Convertible Noteholders and the Consenting 2L Convertible Noteholders with a copy of such proposal (and, in the case of a verbal proposal, a written summary thereof) and (b) respond promptly to the reasonable information requestions and questions from counsel to each of the Consenting 1L Convertible Noteholders and the Consenting 2L Convertible Noteholders relating to such Alternative Restructuring Proposal.

8.03. Nothing in this Agreement shall: (a) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; or (b) prevent any Company Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 9. ***Transfer of Interests and Securities.***

9.01. During the Agreement Effective Period, no Consenting Stakeholder shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Company Claims/Equity Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless:

(a) in the case of any Company Claims/Equity Interests, the authorized transferee is either (i) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (ii) a non-U.S. person in an offshore transaction as defined under Regulation S under the Securities Act, (iii) an institutional accredited investor (as defined in the Rules), or (iv) a Consenting Stakeholder; and

(b) either (i) the transferee executes and delivers to counsel to the Company Parties and counsel to the Consenting 1L Convertible Noteholders, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Stakeholder, and the transferee provides notice of such Transfer (including the amount and type of Company Claim/Equity Interest Transferred) to counsel to the Company Parties at or before the time of the proposed Transfer.

9.02. Upon compliance with the requirements of Section 9.01, the Transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the

extent of the rights and obligations in respect of such transferred Company Claims/Equity Interests. Any Transfer in violation of Section 9.01 shall be void *ab initio*.

9.03. This Agreement shall in no way be construed to preclude the Consenting Stakeholders from acquiring additional Company Claims/Equity Interests; provided, however, that (a) such additional Company Claims/Equity Interests shall automatically and immediately upon acquisition by a Consenting Stakeholder be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Stakeholders) and (b) such Consenting Stakeholder must provide notice of such acquisition (including the amount and type of Company Claim/Equity Interest acquired) to counsel to the Company Parties within five Business Days of such acquisition.

9.04. This Section 9 shall not impose any obligation on any Company Party to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Stakeholder to Transfer any of its Company Claims/Equity Interests. Notwithstanding anything to the contrary herein, to the extent a Company Party and another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

9.05. Notwithstanding Section 9.01, a Qualified Marketmaker that acquires any Company Claims/Equity Interests with the purpose and intent of acting as a Qualified Marketmaker for such Company Claims/Equity Interests shall not be required to execute and deliver a Transfer Agreement in respect of such Company Claims/Equity Interests if: (a) such Qualified Marketmaker subsequently transfers such Company Claims/Equity Interests (by purchase, sale assignment, participation, or otherwise) within five Business Days of its acquisition to a transferee that is an Entity that is not an Affiliate, affiliated fund, or affiliated Entity with a common investment advisor; (b) the transferee otherwise is a Permitted Transferee under Section 9.01; and (c) the Transfer otherwise is a permitted Transfer under Section 9.01. To the extent that a Consenting Stakeholder is acting in its capacity as a Qualified Marketmaker, it may Transfer (by purchase, sale, assignment, participation, or otherwise) any right, title, or interests in Company Claims/Equity Interests that the Qualified Marketmaker acquires from a Holder of the Company Claims/Equity Interests who is not a Consenting Stakeholder without the requirement that the transferee be a Permitted Transferee. For the avoidance of doubt, if a Qualified Marketmaker acquires any Company Claims/Equity Interests from a Consenting Stakeholder and is unable to transfer such Company Claims/Equity Interests within the five Business Day-period referred to above, the Qualified Marketmaker shall execute and deliver a Transfer Agreement in respect of such Company Claims/Equity Interests.

9.06. Notwithstanding anything to the contrary in this Section 9, the restrictions on Transfer set forth in this Section 9 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

9.07. Notwithstanding Section 9.01, any Consenting Stakeholder may Transfer any of its Company Claims/Equity Interests to an affiliate of such Consenting Stakeholder or one or more

of its affiliated funds or an affiliated entity or entities with a common investment advisor or investment manager (in each case, other than portfolio companies); provided that (a) for the avoidance of doubt, any transferee under this Section 9.07 shall be deemed a Consenting Stakeholder for purposes of this Agreement, effective as of the date of the Transfer, (b) any transferor under this Section 9.07 shall remain liable in all respects for any breach of this Agreement by such transferee, and (c) such transferor must provide notice of such Transfer to counsel to the Company Parties within five Business Days of such Transfer; provided, further, that any transferee shall execute the Transfer Agreement attached hereto as **Exhibit F**.

Section 10. ***Representations and Warranties of Consenting Stakeholders.*** Each Consenting Stakeholder severally, and not jointly, represents and warrants that, as of the date such Consenting Stakeholder executes and delivers this Agreement and as of the Plan Effective Date:

(a) it is the beneficial or record owner of the face amount of the Company Claims/Equity Interests or is the nominee, investment manager, or advisor for beneficial Holders of the Company Claims/Equity Interests reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Equity Interests other than those reflected in, such Consenting Stakeholder's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 9);

(b) it has the full power and authority to act on behalf of, vote and consent to matters concerning, such Company Claims/Equity Interests;

(c) such Company Claims/Equity Interests are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, transfer, or encumbrances of any kind, that would adversely affect in any way such Consenting Stakeholder's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Equity Interests referable to it as contemplated by this Agreement subject to applicable Law; and

(e) solely with respect to Holders of Company Claims/Equity Interests, (i) it is either (A) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (B) not a U.S. person (as defined in Regulation S of the Securities Act), or (C) an institutional accredited investor (as defined in the Rules) and (ii) any securities acquired by the Consenting Stakeholder in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act.

Section 11. ***Mutual Representations, Warranties, and Covenants.*** Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, on the Plan Effective Date:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by

applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Plan, and the Bankruptcy Code, if applicable, no consent or approval is required by any other person or Entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

Section 12. ***Termination Events.***

12.01. Required Consenting 1L Convertible Noteholders Termination Events. This Agreement may be terminated with respect to all Parties, by the Required Consenting 1L Convertible Noteholders by the delivery to the Company Parties of a written notice in accordance with Section 16.10 hereof upon the occurrence of the following events:

(a) the breach in any material respect by a Company Party or any Consenting Stakeholder (other than a terminating Consenting Stakeholder) of any of the representations, warranties, or covenants of the Company Parties or any Consenting Stakeholder set forth in this Agreement that (i) is adverse to the Consenting 1L Convertible Noteholders seeking termination pursuant to this provision and (ii) remains uncured (to the extent curable) for five Business Days after such terminating Consenting 1L Convertible Noteholders transmit a written notice in accordance with Section 16.10 hereof detailing any such breach;

(b) unless extended or waived in writing (e-mail being sufficient) by the Required Consenting 1L Convertible Noteholders, the failure to satisfy the Milestones, which failure remains unsatisfied for two Business Days unless such failure is the result of any act, omission, or delay on the part of the terminating Consenting 1L Convertible Noteholders in violation of its obligations under this Agreement;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen Business Days after such terminating Consenting Stakeholders transmit a written notice in accordance with Section 16.10 hereof detailing any such issuance; provided that this termination

right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(d) the Bankruptcy Court enters an order denying confirmation of the Plan and such order remains in effect for fifteen Business Days following entry of such order;

(e) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Debtor seeking an order, (i) converting one or more of the Chapter 11 Cases of a Debtor to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Debtor, or (iii) rejecting this Agreement;

(f) entry by any of the Company Parties, or announcement of their intention to enter into, definitive documentation relating to any Alternative Restructuring Proposal (for the avoidance of doubt, not including any confidentiality agreements);

(g) the Debtors' execution, delivery, amendment, withdrawal, modification, or filing of a pleading seeking approval of, or authority to withdraw, amend or modify, any Definitive Document that, in any such case, is not consistent in all material respects with this Agreement or otherwise reasonably acceptable to the Required Consenting 1L Convertible Noteholders; or

(h) termination of the DIP Facility or acceleration of the obligations under the DIP Facility.

12.02. Consenting 2L Convertible Noteholders, Consenting 3L RCF Lender, and Consenting Equityholder Termination Events. This Agreement may be terminated (a) with respect to the Consenting 2L Convertible Noteholders, by the Required Consenting 2L Convertible Noteholders, (b) with respect to the Consenting 3L RCF Lender, by the Consenting 3L RCF Lender, and (c) with respect to a Consenting Equityholder, by such Consenting Equityholder, in each case, by the delivery to the Company Parties of a written notice in accordance with Section 16.10 hereof upon the occurrence of the following events:

(a) the breach in any material respect by a Company Party or any Consenting Stakeholder (other than a terminating Consenting Stakeholder) of any of the representations, warranties, or covenants of the Company Parties or any Consenting Stakeholder set forth in this Agreement that (i) is adverse to the Consenting Stakeholders seeking termination pursuant to this provision and (ii) remains uncured for fifteen Business Days after such terminating Consenting Stakeholders transmit a written notice in accordance with Section 16.10 hereof detailing any such breach;

(b) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty Business Days after such terminating Consenting Stakeholders transmit a written notice in accordance with Section 16.10 hereof detailing any such issuance; provided that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(c) the Bankruptcy Court enters an order denying confirmation of the Plan;

(d) entry by any of the Company Parties, or announcement of their intention to enter into, definitive documentation relating to any Alternative Restructuring Proposal (for the avoidance of doubt, not including any confidentiality agreements);

(e) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Debtor seeking an order (without the prior written consent of the Required Consenting Stakeholders, not to be unreasonably withheld), (i) converting one or more of the Chapter 11 Cases of a Debtor to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Debtor, or (iii) rejecting this Agreement;

(f) the Debtors' execution, delivery, amendment, withdrawal, modification, or filing of a pleading seeking approval of, or authority to withdraw, amend or modify, any Definitive Document that, in any such case, is not consistent in all material respects with this Agreement or otherwise reasonably acceptable to (i) the Required Consenting 2L Convertible Noteholders and, (ii) to the extent such deviation from this Agreement implicates the consent rights of the Consenting 3L RCF Lender and Consenting Equityholders under Section 3.02 hereof, the Consenting 3L RCF Lender and Consenting Equityholders; or

(g) termination of the DIP Facility or acceleration of the obligations under the DIP Facility.

12.03. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 16.10 hereof upon the occurrence of any of the following events:

(a) the breach in any material respect by one or more of the Consenting Stakeholders of any provision set forth in this Agreement that remains uncured for a period of fifteen Business Days after the receipt by the Consenting Stakeholders of notice of such breach;

(b) the board of directors, board of managers, or such similar governing body of any Company Party determines in good faith, upon the advice of outside counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law or (ii) in the exercise of its fiduciary duties, to pursue an Alternative Restructuring Proposal;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty Business Days after such terminating Company Party transmits a written notice in accordance with Section 16.10 hereof detailing any such issuance; provided that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(d) the Bankruptcy Court enters an order denying confirmation of the Plan.

12.04. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Required Consenting Stakeholders; and (b) each Company Party.

12.05. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately upon the Plan Effective Date.

12.06. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or Causes of Action. Upon the occurrence of a Termination Date prior to the Confirmation Order being entered by a Bankruptcy Court, any and all consents or ballots tendered by the Parties subject to such termination before a Termination Date shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Restructuring Transactions and this Agreement or otherwise; provided, however, that any Consenting Stakeholder withdrawing or changing its vote pursuant to this Section 12.06 shall promptly provide written notice of such withdrawal or change to each other Party to this Agreement and, if such withdrawal or change occurs on or after the Petition Date, file notice of such withdrawal or change with the Bankruptcy Court. Nothing in this Agreement shall be construed as prohibiting a Company Party or any of the Consenting Stakeholders from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of any Company Party or the ability of any Company Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its Claims against any Consenting Stakeholder, and (b) any right of any Consenting Stakeholder, or the ability of any Consenting Stakeholder, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its Claims against any Company Party or Consenting Stakeholder. No purported termination of this Agreement shall be effective under this Section 12.06 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement, except a termination pursuant to Section 12.01(c), Section 12.01(d), Section 12.01(e), Section 12.02(b), and Section 12.02(e). Nothing in this Section 12.06 shall restrict any Company Party's right to terminate this Agreement in accordance with Section 12.03(b).

Section 13. ***Fees and Expenses.*** The payment of the reasonable and documented out-of-pocket fees, costs, expenses, and disbursements of the Consenting Stakeholders, limited to all prepetition and postpetition fees, costs, expenses, and disbursements of (a) Willkie Farr & Gallagher LLP and Young Conaway Stargatt & Taylor, LLP, as counsel to the 1L Convertible Noteholders, (b) M3 Partners, LP as financial advisors to the 1L Convertible Noteholders, (c) Shipman & Goodwin LLP, as counsel to the 1L Convertible Notes Agent, (d) Greenberg Traurig, LLP, as counsel to the 2L Convertible Noteholders, (e) Latham & Watkins LLP and [Local Counsel], as counsel to the 3L RCF Lender and the Consenting Equityholders, and (f) any other attorneys, financial advisors,

or professionals with the consent of the Consenting 1L Convertible Noteholders and the Company Parties; in each case in accordance with the terms of any DIP Order or confirmed Plan.

Section 14. ***Amendments and Waivers.***

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 14.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by: (a) each Company Party; (b) the Required Consenting 1L Convertible Noteholders; (c) the Required Consenting 2L Convertible Noteholders, solely with respect to any modification, amendment, waiver, or supplement that materially and adversely affects the rights of the Required Consenting 2L Convertible Noteholders; and (d) the Consenting 3L RCF Lender, solely with respect to any modification, amendment, waiver, or supplement that materially and adversely affects the rights of the Consenting 3L RCF Lender and/or the Consenting Equityholders; provided, however, that if the proposed modification, amendment, waiver, or supplement has a material, disproportionate, and adverse effect on any of the Company Claims/Equity Interests held by a Consenting Stakeholder, then the consent of each such affected Consenting Stakeholder shall also be required to effectuate such modification, amendment, waiver, or supplement.

(c) Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 14 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power, or remedy by such Party preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power, or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 15. ***Reserved.***

Section 16. ***Miscellaneous.***

16.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

16.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and

schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

16.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

16.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

16.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in the Bankruptcy Court, and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party hereto.

16.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

16.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Stakeholders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Stakeholders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

16.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or Entity.

16.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to a Company Party, to:

Jeremy M. Dale, General Counsel
E-mail address: jeremy.dale@appgate.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Christopher J. Marcus P.C., Derek I. Hunter,
Maddison Levine, and Brian Nakhaimousa
E-mail addresses: christopher.marcus@kirkland.com
derek.hunter@kirkland.com
maddison.levine@kirkland.com
brian.nakhaimousa@kirkland.com

(b) if to a Consenting 1L Convertible Noteholder, to:

Willkie Farr & Gallagher LLP
300 North LaSalle Drive
Chicago, Illinois 60654-3406
Attention: Melainie Mansfield
E-mail address: mmansfield@willkie.com

- and –

Willkie Farr & Gallagher LLP
600 Travis Street, Suite 2100
Houston, Texas 77002
Attention: Jennifer Hardy
E-mail address: jhardy2@willkie.com

- and –

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019-6099

Attention: Eric Halperin
E-mail address: ehalperin@willkie.com

(c) if to a Consenting 2L Convertible Noteholder, to:

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131
Attention: Jaret L. Davis
E-mail Address: davisj@gtlaw.com

(d) if to a Consenting 3L RCF Lender or to a Consenting Equityholder, to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attention: Eyal Orgad, Andrew Sorkin
E-mail address: eyal.orgad@lw.com, andrew.sorkin@lw.com

Any notice given by delivery, mail, or courier shall be effective when received.

16.11. Independent Due Diligence and Decision Making. Each Consenting Stakeholder hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties.

16.12. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

16.13. No Waiver of Participation and Preservation of Rights. Except as expressly provided in this Agreement, nothing herein is intended to, does, or shall be deemed in any manner to waive, limit, impair or restrict the ability of each of the Parties to protect and preserve its rights, remedies, and interests, including its full participation in the Chapter 11 Cases, so long as, in each case, such actions are not inconsistent with the Party's obligations under this Agreement, the Plan, or the other Definitive Documents, respectively. Furthermore, nothing in this Agreement shall be construed to prohibit any Party from appearing as a party in interest in any matter to be adjudicated in the Chapter 11 Cases, so long as such appearance and the positions advocated in connection therewith are consistent with this Agreement and are not for the purpose of, and could not reasonably be expected to have the effect of, hindering, delaying, or preventing the timely consummation of the Plan.

16.14. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights,

remedies, claims, and defenses. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

16.15. Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

16.16. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

16.17. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

16.18. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

16.19. Capacities of Consenting Stakeholders. Each Consenting Stakeholder has entered into this agreement on account of all Company Claims/Equity Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Equity Interests.

16.20. Survival. Notwithstanding (a) any Transfer of any Company Claims/Equity Interests in accordance with this Agreement or (b) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 14 and the Confidentiality Agreements shall survive such Transfer and/or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof.

16.21. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3.02, Section 14, or otherwise, including a written approval by the Company Parties or the Required Consenting Stakeholders, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

[*Signature pages follow.*]

Company Parties' Signature Page to
the Restructuring Support Agreement

[*Signature pages on file with the Company Parties.*]

Consenting Stakeholder Signature Page to
the Restructuring Support Agreement

[*Signature pages on file with the Company Parties.*]

EXHIBIT A

Company Parties

APPGATE CYBERSECURITY, INC.
APPGATE, INC.
CATBIRD NETWORKS, INC.
CRYPTZONE GROUP AB
CRYPTZONE INTERNATIONAL HOLDINGS INC.
CRYPTZONE NORTH AMERICA INC.
CRYPTZONE UK LTD.
CRYPTZONE WORLDWIDE, INC.
EASY SOLUTIONS DO BRASIL LTDA.
EASY SOLUTIONS ENTERPRISES CORP.
EASY SOLUTIONS, INC.
EASY SOLUTIONS JAPAN G.K.
EASY SOLUTIONS S.A.S.
IMMUNITY FEDERAL SERVICES, LLC
IMMUNITY, INC.
IMMUNITY, INC. SUCURSAL EMPRESA EXTRANJERA
IMMUNITY PRODUCTS, LLC
IMMUNITY SERVICES, LLC

EXHIBIT B

Restructuring Term Sheet

APPGATE, INC.

RESTRUCTURING TERM SHEET

MAY 3, 2024

THIS TERM SHEET (TOGETHER WITH ALL ANNEXES, SCHEDULES AND EXHIBITS HERETO, THIS "TERM SHEET") DESCRIBES THE PRINCIPAL TERMS AND CONDITIONS OF A RESTRUCTURING TRANSACTION FOR APPGATE, INC. ("APPGATE") AND CERTAIN OF ITS AFFILIATES THAT WILL BE EFFECTUATED THROUGH VOLUNTARY PREPACKAGED CASES UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE (THE "CHAPTER 11 CASES") IN THE BANKRUPTCY COURT, ON THE TERMS, AND SUBJECT TO THE CONDITIONS, TO BE FULLY SET FORTH IN A RESTRUCTURING SUPPORT AGREEMENT (TOGETHER WITH THE EXHIBITS ATTACHED TO SUCH AGREEMENT, INCLUDING THIS TERM SHEET, EACH AS MAY BE AMENDED, RESTATED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS THEREOF, THE "RSA") AND CHAPTER 11 PLAN OF REORGANIZATION (THE "PLAN").

THIS TERM SHEET IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES OF THE COMPANY OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY CHAPTER 11 PLAN, IT BEING UNDERSTOOD THAT SUCH A SOLICITATION, IF ANY, SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND/OR OTHER APPLICABLE LAWS.

CAPITALIZED TERMS USED BUT NOT INITIALLY DEFINED IN THIS TERM SHEET SHALL HAVE THE MEANING HEREINAFTER ASCRIBED TO SUCH TERMS, OR IF NOT DEFINED IN THIS TERM SHEET, SUCH TERMS SHALL HAVE THE MEANING ASCRIBED TO SUCH TERMS IN THE RSA AND PLAN.

THIS TERM SHEET IS FOR DISCUSSION PURPOSES ONLY AND DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN, AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS.

OVERVIEW	
Restructuring Summary	The Restructuring Transactions shall be implemented through the filing of the Chapter 11 Cases, the jurisdiction of filing being the United States Bankruptcy Court for the District of Delaware. As reorganized pursuant to the Restructuring Transactions, the Company Parties shall be referred to herein, collectively, as the "Reorganized Debtors."
Existing Capital Structure	The current Equity Interests and equity-like classes of Appgate, Inc. (including all preferred securities, common interests, warrants, options, phantom or other equity and equity-like securities or interests) includes Common Stock, $0.001 par value per share, and is thinly traded on the over-the-counter markets under the ticker "APGT" (the "Common Stock"). The current indebtedness of the Company includes: (i) that certain amended and restated convertible notes issuance agreement, dated June 9, 2023 (as amended, restated, modified, or supplemented from time to time consistent with the terms thereof, the "1L Convertible NIA") by and among Appgate Cybersecurity, Inc. as issuer, Appgate, Inc., as parent, the guarantors party thereto, Magnetar Financial LLC, as representative of the Holders (collectively, the "1L Convertible Noteholders"), and U.S. Bank Trust Company, National Association, as collateral agent (in such capacity, the "1L Convertible Notes Agent"). As of the date hereof, approximately $101.2 million in unpaid aggregate amount is outstanding under the 1L Convertible NIA, plus accrued but unpaid interest, fees, premiums, and all other obligations, amounts, and expenses arising under or in connection with the 1L Convertible NIA (such amounts, the "1L Convertible Notes Claims"); (ii) that certain convertible notes issuance agreement, dated July 20, 2023 (as amended, restated, modified, or supplemented from time to time consistent with the terms thereof, the "2L Convertible NIA") by and among Appgate Cybersecurity, Inc. as issuer, Appgate, Inc., as parent, the guarantors party thereto, Appgate Funding, LLC, as representative of the Holders (the "2L Convertible Noteholders") and collateral agent (in such capacity, the "2L Convertible Notes Agent"). As of the date hereof, approximately $8.8 million in unpaid aggregate amount is outstanding under the 2L Convertible NIA, plus accrued but unpaid interest, fees, premiums, and all other obligations, amounts, and expenses arising under or in connection with the 2L Convertible NIA (such amounts, the "2L Convertible Notes Claims"); and (iii) that certain amended and restated revolving credit agreement, dated as of June 9, 2023 (as amended, restated, modified, or supplemented from time to time consistent with the terms thereof, the "3L RCF Credit Agreement") by and among Appgate Cybersecurity, Inc., as borrower, Appgate, Inc., as parent, the guarantors party thereto, and SIS Holdings, L.P., as lender (the "3L RCF Lender"). As of the date hereof, approximately $50 million

	in unpaid aggregate principal amount is outstanding under the 3L RCF Credit Agreement, plus accrued but unpaid interest, fees, premiums, and all other obligations, amounts, and expenses arising under or in connection with the 3L RCF Credit Agreement (such amounts, the "3L RCF Claims").
DIP Facility	To fund the costs of implementing the Restructuring Transactions, certain 1L Convertible Noteholders (the "DIP Lenders") shall provide a senior secured super priority debtor-in-possession financing facility in the aggregate principal amount of $18 million (the "DIP Facility", and the loans under the DIP Facility, the "DIP Loans", and together with the accrued but unpaid interest, fees, premiums, and all other obligations, amounts, and expenses arising under or in connection with the DIP Facility, the "DIP Claims") consistent with the terms and conditions set forth in the DIP Credit Agreement, attached as Exhibit C to the RSA.
Cash Collateral	The Consenting Stakeholders, as applicable will support the Debtors' consensual use of Cash Collateral during the Chapter 11 Cases on the terms and conditions set forth in the DIP Credit Agreement and any DIP Order, in form and substance reasonably acceptable to the Company Parties and the DIP Lenders and as approved by the Bankruptcy Court.
Reorganized Debtors' Capital Structure	The equity capital structure of New Appgate Holdings upon the Plan Effective Date shall consist solely of the following: (i) New Series A Units (the "Series A Units") issued by New Appgate Holdings on the Plan Effective Date, after giving effect to the Restructuring Transactions, which, for the avoidance of doubt, may be a new entity formed to acquire, directly or indirectly, substantially all of the new equity interests in, or all or substantially all of the assets of, Appgate, Inc. to be held by the DIP Lenders and the 1L Convertible Noteholders; (ii) New Series A-1 Units issued by New Appgate Holdings on the Plan Effective Date, which will be pari passu with the Series A Units (the "Series A-1 Units"), to the extent that an election is made by or on behalf of a DIP Lender or 1L Convertible Noteholder to receive such Series A-1 Units, and to be held by such electing DIP Lenders and 1L Convertible Noteholders (the Holders of such Series A-1 Units, together with the Holders of Series A Units, the "Series A Holders"); (iii) New Series B Units issued by New Appgate Holdings, which will be junior to the Series A Units (the "Series B Units"), to be held by the 2L Convertible Noteholders (the "Series B Holders"); (iv) New Class C common interests issued by New Appgate Holdings, which will be junior to the Series A Units and the Series B Units (the "Class C Common Units"), to be held by the DIP Lenders, the 1L Convertible Noteholders, and the 2L Convertible Noteholders (the "Class C Common Units Holders"); (v) New Class C-1 common interests issued by New Appgate Holdings, which will be junior to the Series A Units, Series A-1 Units, the Series B Units and

	pari passu with the Class C Common Units (the "Class C-1 Common Units"), to the extent that an election is made by or on behalf of a DIP Lender or 1L Convertible Noteholder to receive such Class C-1 Common Units, and to be held by such electing DIP Lenders and 1L Convertible Noteholders (the "Class C-1 Common Units Holders"); and (vi) New Class C profits interests issued by New Appgate Holdings, which will be junior to the Series A Units, the Series A-1 Units, and the Series B Units (the "Class C Profits Interests," together with the Class C Common Units and Class C-1 Common Units, the "Class C Units"), to be held by a newly formed management holdings vehicle (the "Management Vehicle") on behalf of the participants in the Management Incentive Plan (as discussed below) (the "Class C Profits Interest Holders," together with the Class C Common Units Holders and the Class C-1 Common Units Holders, the "Class C Holders"). The Reorganized Debtors will have no funded indebtedness as of the Plan Effective Date and all Reorganized Debtors will be owned 100%, directly or indirectly, by New Appgate Holdings.
Post-Plan Effective Date Priority Waterfall	Among the other rights described in the Corporate Governance Documents, Series A Holders, Series B Holders, and Class C Holders shall be entitled to the distributions, including, any proceeds from or in connection with any sale transaction, following the Plan Effective Date, according to the following priority: (i) ***First***, the Series A Holders shall receive their *pro rata* share of distributions until the aggregate amount of distributions in respect of Series A Units and Series A-1 Units pursuant to this clause (i) equals $111,239,156; (ii) ***Second***, the Series B Holders shall receive their *pro rata* share of distributions in excess of the $111,239,156 distributed pursuant to clause (i), until the aggregate amount of distributions in respect of Series B Units pursuant to this clause (ii) equals $8,499,000; (iii) ***Third***, the Series A Holders shall receive their *pro rata* share of distributions in excess of the $119,738,156 pursuant to clauses (i) and (ii), until the aggregate amount of distributions in respect to Series A Units and Series A-1 Units pursuant to this clause (iii) equals $10,051,854.56; and (iv) ***Fourth***, any distributions in excess of the $129,790,010.56 pursuant to clauses (i), (ii), and (iii), shall be distributed on a *pro rata* basis among the Class C Holders, consistent with the following: a. 80% of the Class C Units (all of which shall be Class C Common Units or Class C-1 Common Units) to be allocated on a *pro rata* basis among the DIP Lenders and the 1L Convertible Noteholders; b. 5% of the Class C Units (all of which shall be Class C Common Units) to be allocated on a *pro rata* basis among the 2L Convertible Noteholders; and

	c. 15% of the Class C Units (all of which shall be Class C Profits Interests) to be reserved for issuance to the Management Vehicle on behalf of the Class C Profits Interest Holders, which Management Vehicle will issue mirror interests to Class C Profits Interests Holders in accordance with the terms of the Management Incentive Plan.
Forbearance	Each Consenting Stakeholder agrees, severally and not jointly, in respect of all of its Company Claims and/or Equity Interests to forbear from exercising rights and remedies under any of the 1L Convertible NIA, the 2L Convertible NIA, and/or the 3L RCF Credit Agreement, as applicable, arising solely from the occurrence and the continuation of any Event of Default (as defined therein); *provided* that, such forbearance is contingent upon a fully-executed RSA being in effect.

TREATMENT OF CLAIMS AND INTERESTS

Type of Claim	Treatment	Impairment/ Voting
DIP Claims	On the Plan Effective Date, each Holder of an allowed DIP Claim shall receive, in full and final satisfaction of such claims, either (i) payment in full in cash, or (ii) their *pro rata* share, calculated as if the DIP Claims were included in the Class 3 1L Convertible Notes Claims, of (A) the Series A Units or Series A-1 Units and (B) the Class C Units attributable to the allowed DIP Claims and the allowed 1L Convertible Notes Claims, which shall be equal to approximately 94.11 percent of the Class C Units issued on the Plan Effective Date and subject to dilution on account of the Management Incentive Plan and the terms thereof (the "Class C Magnetar Units").	N/A
Administrative and Priority Tax Claims	On the Plan Effective Date, each Holder of an allowed administrative claim or priority tax claim shall receive cash equal to the full amount of its claim or such other treatment as required by section 1129(a)(9) of the Bankruptcy Code, unless otherwise agreed to by such Holder or permitted by the Bankruptcy Code.	N/A
Other Secured Claims	On the Plan Effective Date, each Holder of an allowed Other Secured Claim, if any, shall receive, in full and final satisfaction of such claims, either (i) payment in full in cash, (ii) delivery of the collateral securing such claim, (iii) reinstatement of such claim, or (iv) such other treatment rendering such claim unimpaired in accordance with section 1124 of the Bankruptcy Code, unless otherwise agreed to by such Holder.	Unimpaired; Deemed to Accept.
Other Priority Claims	On the Plan Effective Date, each Holder of an allowed Other Priority Claim shall receive cash in an amount equal to such claim, unless otherwise agreed to by such Holder.	Unimpaired; Deemed to Accept.

1L Convertible Notes Claims	On the Plan Effective Date, each Holder of an allowed 1L Convertible Notes Claim will receive, in full and final satisfaction of such 1L Convertible Notes Claim, such Holder's *pro rata* share, calculated as if the DIP Claims were included in the Class 3 1L Convertible Notes Claims, of (i) the Series A Units or Series A-1 Units, after taking into account the Series A Units and Series A-1 Units issued on account of the DIP Claims, and (ii) the Class C Magnetar Units.	Impaired; Entitled to Vote.
2L Convertible Notes Claims	On the Plan Effective Date, each Holder of an allowed 2L Convertible Notes Claim will receive, in full and final satisfaction of such 2L Convertible Notes Claim, (i) the Series B Units and (ii) the Class C Units attributable to the allowed 2L Convertible Notes Claims, which shall be equal to approximately 5.89 percent of the Class C Units issued on the Plan Effective Date and subject to dilution on account of the Management Incentive Plan and the terms thereof (the "Class C AGF Units").	Impaired; Entitled to Vote.
3L RCF Claims	On the Plan Effective Date, all 3L RCF Claims shall be discharged, cancelled, released, and extinguished under the Plan, and Holders thereof shall not receive or retain any distribution under the Plan on account of such 3L RCF Claims.	Impaired; Deemed to Reject.
General Unsecured Claims	On the Plan Effective Date, each Holder of an allowed General Unsecured Claim shall receive either: (i) reinstatement of such allowed General Unsecured Claim pursuant to section 1124 of the Bankruptcy Code; or (ii) payment in full in cash on (a) the Plan Effective Date, or (b) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such allowed General Unsecured Claim, unless otherwise agreed to by such Holder.	Unimpaired; Deemed to Accept.
Section 510(b) Claims	On the Plan Effective Date, allowed claims arising under section 510(b) of the Bankruptcy Code (each, a "510(b) Claim"), if any, shall be cancelled without any distribution, and such holders of 510(b) Claims will receive no recovery.	Impaired; Deemed to Reject.
Existing Intercompany Claims	On the Plan Effective Date, Intercompany Claims shall be, at the option of the Reorganized Debtors or the Company Parties, either: (i) reinstated; or (ii) set off, settled, discharged, contributed, cancelled, and released without any distribution on account of such Intercompany Claims, or otherwise addressed at the option of the Reorganized Debtors or Company Parties.	Unimpaired; Deemed to Accept / Impaired; Deemed to Reject.
Existing Intercompany Equity Interests	On the Plan Effective Date, Intercompany Equity Interests shall be, at the option of the Reorganized Debtors or the Company Parties, either: (i) reinstated; or (ii) set off, settled, discharged, contributed, cancelled, and released without any distribution on account of such Intercompany Equity Interests, or otherwise addressed at the option of the Reorganized Debtors or Company Parties.	Unimpaired; Deemed to Accept / Impaired; Deemed to Reject.

Existing Equity Interests	On the Plan Effective Date, all existing Equity Interests in Appgate shall be discharged, cancelled, released, and extinguished under the Plan, and each Holder of an existing Equity Interest in Appgate shall not receive or retain any distribution, property, or other value under the Plan on account of such existing Equity Interests in Appgate.	Impaired; Deemed to Reject.
SUMMARY OF TERMS OF THE RESTRUCTURING TRANSACTIONS		
Cancellation of Equity Interests	On the Plan Effective Date, Holders of Equity Interests in Appgate shall be deemed to have waived all legal, equitable, and contractual interests in the Equity Interests and such Equity Interests shall be cancelled and released without any distribution on account of such Equity Interests, including, for the avoidance of doubt, any securities laws claims subject to subordination pursuant to section 510(b) of the Bankruptcy Code.	
Executory Contracts and Unexpired Leases	The Plan will provide that the executory contracts and unexpired leases that are not assumed or rejected as of the Plan Effective Date (either pursuant to the Plan or a separate motion) will be deemed assumed pursuant to section 365 of the Bankruptcy Code.	
Survival of Indemnification Provisions and D&O Insurance	All indemnification provisions, consistent with applicable law, currently in place (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the benefit of current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Company Parties, as applicable, shall be reinstated and remain intact, irrevocable, and shall survive the Plan Effective Date on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Company Parties than the indemnification provisions in place prior to the Plan Effective Date. In addition, after the Plan Effective Date, the Company Parties will not reduce the coverage under any directors' and officers' insurance policies (including any "tail policy") in effect or purchased as of the Petition Date, and all members, managers, directors, and officers of the Company Parties who served in such capacity at any time prior to the Plan Effective Date or any other individuals covered by such insurance policies, will be entitled to the full benefits of any such policy for the full term of such policy (or comparable replacement policy) regardless of whether such members, managers, directors, officers, or other individuals remain in such positions on or after the Plan Effective Date.	
Claims of the Company Parties	The Reorganized Debtors shall retain all rights to commence and pursue any Causes of Action, other than any Causes of Action released or exculpated by the Company Parties pursuant to the release and exculpation provisions set forth in this Term Sheet, the RSA, and the Plan.	
Management Incentive Plan	The Plan will provide for the establishment of a post-emergence management incentive plan to be designed and adopted by the New Board (as defined below)	

	following the Effective Date, to be used to incentivize and compensate employees, directors, consultants, and other service providers (the "Management Incentive Plan"), which will include (i) the ability to grant incentive equity awards representing up to 15 percent of the Class C Units (all of which shall be Class C Profits Interests) on a fully diluted basis (the "Management Incentive Plan Equity") and (ii) other terms and conditions customary for similar equity plans as determined by the New Board in its sole discretion (including, with respect to participants, allocation of awards, and vesting); *provided* that any Management Incentive Plan shall provide that distributions to Class C Profits Interests Holders in respect of any authorized but unissued, unvested, or forfeited Class C Profits Interests shall be distributed in accordance with the distribution allocations provided in the New Limited Liability Company Agreement.
Organizational Documents and Governance	The Corporate Governance Documents and any other documentation evidencing the corporate governance for any Company Party and any direct or indirect subsidiary thereof, including charters, bylaws, limited liability company agreements, shareholder agreements, and/or other organization documents of such entities will be consistent with the RSA (including the consent rights set forth therein). The board of directors of the Reorganized Debtors shall consist of [five managers] as designated in accordance with the New Limited Liability Company Agreement, attached as Exhibit D to the RSA. For so long as Appgate Funding, LLC and/or an affiliate thereof holds at least 50% of the aggregate number of Class C Units issued to them on the Plan Effective Date, Mr. Manny Medina shall have the right to be designated as a manager by the Series B Holders on the Plan Effective Date, absent removal for cause.
Releases and Exculpation	The Plan, attached to the RSA as Exhibit E, contains the customary debtor and third-party release and exculpation provisions supported by the Consenting Stakeholders.
Additional Series A Units Issuance	Further, following the Effective Date, the Series A Holders shall, in their discretion, after consultation with the Debtors, provide, or commit to provide, incremental liquidity needed to fund cash shortfalls of the Reorganized Debtors following the Effective Date. Any incremental liquidity amount and accompanying documentation, including any commitment to purchase additional Series A Units or Series A-1 Units, shall be (a) filed as part of the Plan Supplement, and (b) subject to the preemptive rights set forth in Section 3.04 of the New Limited Liability Company Agreement.
Tax Structure	To the extent practicable, the Restructuring Transactions contemplated by this Term Sheet will be structured so as to obtain the most beneficial tax structure for the Company Parties, as determined by the Company Parties and the Required Consenting 1L Convertible Noteholders.
Exemption from SEC Registration	The issuance of all securities under the Plan will be exempt from registration under the Securities Act and applicable law.
Private Company	The Reorganized Debtors shall not be reporting companies for the purposes of any applicable federal securities laws or regulations, and any transfer of Series B Units and Class C Units shall require the approval of the DIP Lenders.

Conditions Precedent to the Plan Effective Date	There shall be customary conditions to the Plan Effective Date consented to by the Required Consenting 1L Convertible Noteholders, including, but not limited to, completion of applicable federal regulatory review and approvals.
Professional Advisors	Kirkland & Ellis LLP, Triple P RTS, LLC, Triple P Securities, LLC, Cole Schotz P.C., and Donlin, Recano & Co., Inc. and any other advisors to be engaged and/or hired by the Company Parties in consultation with the DIP Lenders.
GENERAL PROVISIONS REGARDING THE RESTRUCTURING TRANSACTIONS	
Cancellation of Notes, Certificates, and Other Documents	On the Plan Effective Date, except to the extent otherwise provided in this Term Sheet, the RSA, the Plan, or other Definitive Documents, as applicable, all notes, instruments, certificates, and other documents evidencing Claims (other than those that are reinstated) or Equity Interests in Appgate, including credit agreements and note purchase agreements, shall be cancelled, and all present and future obligations and liabilities, actions, suits, accounts or demands, covenants and indemnities (both actual and contingent) under or in connection with the 1L Convertible NIA, 2L Convertible NIA, and the 3L RCF Credit Agreement of the Debtors or the Reorganized Debtors, as applicable, and any non-Debtor Affiliates thereunder or in any way related thereto, shall be deemed satisfied in full, cancelled, discharged, and of no force or effect, and the Agents/Trustees shall be released from all duties and obligations thereunder.
Surrender and Cancellation of Instruments or Securities	On the Plan Effective Date or as soon as reasonably practicable thereafter, each Holder (and the applicable Agents for such Holder, including the Agents/Trustees) of a certificate or instrument evidencing a Claim or an Equity Interest that has been cancelled shall be deemed to have surrendered such certificate or instrument. Such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and any non-Debtor Affiliates, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties (other than the non-Debtor Affiliates) in respect of one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Equity Interest, which all continue in effect for the purposes of allowing Holders to receive distributions under the Plan, charging liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary in the Plan, the foregoing shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.
Release of Liens	Except as otherwise provided in the Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Plan Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim or any related claim that may be asserted against a non-Debtor Affiliate, in satisfaction in full of the portion of the Secured Claim that is allowed as of the Plan Effective Date, except for Other Secured Claims that the Debtors elect to reinstate in accordance with the Plan, all mortgages, deeds of trust, liens, pledges, or other security interests against any property of the estates or any non-Debtor Affiliate shall be fully released and discharged, and all of the right, benefit, title, and interest of any Holder (and the applicable Agents for such Holder, including the Agents/Trustees) of such mortgages, deeds of trust, liens,

	pledges, or other security interests shall revert and, as applicable, be reassigned, surrendered, reconveyed, or retransferred to the Reorganized Debtors and their successors and assigns. Any Holder of such Secured Claim or claim against a non-Debtor Affiliate (and the applicable agents for such Holder, including the Agents/Trustees) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor or non-Debtor Affiliate (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder, including the Agents/Trustees) and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such liens.
Restructuring Transactions Tax Structuring	The Company Parties and the Consenting Stakeholders will negotiate in good faith to structure and implement the Restructuring Transactions (a) in a tax-efficient manner (including, but not limited to, by way of the preservation or enhancement of favorable tax attributes) to the Company Parties and the Reorganized Debtors, (b) in a manner that minimizes any current cash taxes payable by the Reorganized Debtors, and (c) to the extent not inconsistent with the preceding clauses (a) and (b), and to the extent reasonably practicable in a manner intended to be tax-efficient for Holders of Claims and Equity Interests; *provided*, that no guarantee of tax efficiency will be made to any particular Holder, which may include reorganizing the ownership structure of the Company Parties, its subsidiaries and assets, and/or the exchange of Equity Interests of one or more existing or newly-formed subsidiaries of the Company Parties that own the assets currently owned by the Company Parties, rather than equity of the Company Parties, the Company Parties making one or more "elections" for U.S. federal income tax purposes, applying for one or more private letter rulings with the Internal Revenue System, and/or transferring or assigning debt from an applicable Company Party or subsidiary to one or more Company Parties or subsidiaries.

EXHIBIT C

DIP Credit Agreement

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION[1]

CREDIT AGREEMENT

Dated as of [_____], 2024

by and among

APPGATE CYBERSECURITY, INC.,

as Borrower,

EACH PERSON
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,
as Guarantors,

THE LENDERS FROM TIME TO TIME PARTY HERETO,
as Lenders,

and

[U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION],
as Administrative Agent and Collateral Agent

[1] NTD: Subject to Willkie tax review

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SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION FINANCING AGREEMENT

THIS SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION FINANCING AGREEMENT, dated as of [____], 2024, by and among APPGATE CYBERSECURITY, INC., a Delaware corporation (the "Borrower"), each Person listed as a "Guarantor" on the signature pages hereto (together with each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder, each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders"), [U.S. Bank Trust Company, National Association], ("[U.S. Bank]"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and [U.S. Bank], as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

RECITALS

WHEREAS, on May [6], 2024, (the "Petition Date"), the Borrower and the other Loan Parties (collectively, the "Debtors" and, each individually, a "Debtor") each commenced a chapter 11 case, which are being jointly administered (each, a "Chapter 11 Case," and collectively, the "Chapter 11 Cases") by filing separate voluntary petitions for relief under Chapter 11 of the U.S. Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"); and each Debtor continues to operate its businesses and manage its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain of the Lenders and/or certain of their affiliates or controlled funds provided financing to the Borrower pursuant to that certain Amended and Restated Note Issuance Agreement, dated as of June 9, 2023 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "1L Convertible NIA" and together with the other "Loan Documents" (as defined therein), the "1L Convertible Notes Documents"), by and among the Borrower, as the issuer, Parent and the other guarantors party thereto, Magnetar Financial LLC, as the representative of the Noteholders (as defined therein) (such Noteholders, the "1L Convertible Noteholders"), and U.S. Bank Trust Company, National Association, as collateral agent (in such capacity, the "1L Convertible Notes Agent," and together with the 1L Convertible Noteholders, the "1L Secured Parties," and the Obligations (as defined therein) of the 1L Secured Parties under the 1L Convertible Notes Documents, the "1L Convertible Notes Obligations");

WHEREAS, prior to the Petition Date, certain other lending and/or investment entities have provided financing to the Borrower pursuant to (a) that certain Note Issuance Agreement, dated as of July 20, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "2L Convertible NIA," and, together with the other "Loan Documents" (as defined therein), the "2L Convertible Notes Documents"), by and among the Borrower, as the issuer, Parent and the other guarantors party thereto, and Appgate Funding LLC, as the representative of the Lenders (as defined therein) (such Lenders, the "2L Convertible Noteholders") and as collateral agent (in such capacity, the "2L Convertible Notes Agent," and, together with the 1L Convertible Notes Agent, the "Prepetition Secured Agents," and the 2L

Convertible Notes Agent together with the 2L Convertible Noteholders, the "2L Secured Parties," and the outstanding obligations of the 2L Secured Parties in respect of the 2L Convertible Notes Documents, the "2L Convertible Notes Obligations") and (b) that certain Amended and Restated Revolving Credit Agreement, dated as of June 9, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "3L RCF Credit Agreement" and, together with the other Loan Documents (as defined therein), the "3L RCF Loan Documents," and, together with the 1L Convertible Notes Documents and the 2L Convertible Notes Documents, the "Prepetition Debt Documents," and the Obligations (as defined therein) of the 3L Secured Party in respect of the 3L RCF Loan Documents, the "3L RCF Obligations," and, together with the 1L Convertible Notes Obligations and the 2L Convertible Notes Obligations, the "Prepetition Obligations"), by and among SIS Holdings, L.P., as the lender (the "3L Secured Party," and, together with the 1L Secured Parties and the 2L Secured Parties, collectively, the "Prepetition Secured Parties"), the Borrower, as the borrower, Parent, and the other guarantors party thereto;

WHEREAS, the Loan Parties party hereto (in their capacity as Debtors) have requested that the Lenders party hereto provide a senior secured, superpriority debtor-in-possession term loan facility as set forth herein in the maximum aggregate principal amount of $[18,000,000] (the "DIP Facility"), which is subject to the terms and conditions set forth herein and in the DIP Orders;

WHEREAS, the proceeds of the DIP Facility shall be used to fund the costs and expenses of the Chapter 11 Cases, general corporate purposes and working capital requirements of Borrower and its Subsidiaries during the pendency of the Chapter 11 Cases, and such other purposes set forth in Section 6.01(j) herein and in compliance with Section 7.25;

WHEREAS, each of the Guarantors will guaranty all of the Obligations under the Loan Documents;

WHEREAS, in order to secure the Obligations of the Borrower and the other Guarantors under the Loan Documents, the Borrower and the Guarantors will each grant to the Collateral Agent, for the benefit of Collateral Agent and all other Secured Parties, subject to the Carve Out, a security interest in and a Lien upon substantially all of the now existing and hereafter acquired property of each of the Loan Parties, subject to the limitations and priorities contained in the Loan Documents and the DIP Orders;

WHEREAS, the relative priority of the Liens and security interests granted to secure the Obligations in relation to the Liens and security interests securing the Prepetition Obligations and certain other obligations will be set forth in the DIP Orders; and

WHEREAS, the Lenders are, severally, and not jointly, willing to extend such credit to the Borrower and the other Loan Parties on the terms and subject to the conditions set forth herein and the DIP Orders, as applicable.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

"13-Week Budget" means a thirteen-week rolling operating budget and cash flow forecast, in form and substance acceptable to the Required Lenders in their sole discretion which shall reflect the Borrower's good faith projection of all weekly cash receipts and disbursements in connection with the operation of the Loan Parties' and their respective Subsidiaries' businesses during such thirteen-week period, as such budget and forecast may be updated from time to time as required under Section 7.03 and which has been certified by an officer of the Borrower as having been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made (it being acknowledged and agreed that the thirteen-week rolling operating budget and cash flow forecast attached hereto as Exhibit A is in form and with such level of detail acceptable to the Required Lenders).

"1L Convertible NIA" has the meaning assigned to such term in the recitals hereto.

"1L Convertible Noteholders" has the meaning assigned to such term in the recitals hereto.

"1L Convertible Notes Agent" has the meaning assigned to such term in the recitals hereto.

"1L Convertible Notes Documents" has the meaning assigned to such term in the recitals hereto.

"1L Convertible Notes Obligations" has the meaning assigned to such term in the recitals hereto.

"1L Secured Parties" has the meaning assigned to such term in the recitals hereto.

"2L Convertible NIA" has the meaning assigned to such term in the recitals hereto.

"2L Convertible Noteholders" has the meaning assigned to such term in the recitals hereto.

"2L Convertible Notes Agent" has the meaning assigned to such term in the recitals hereto.

"2L Convertible Notes Documents" has the meaning assigned to such term in the recitals hereto.

"2L Convertible Notes Obligations" has the meaning assigned to such term in the recitals hereto.

"2L Secured Parties" has the meaning assigned to such term in the recitals hereto.

"3L RCF Credit Agreement" has the meaning assigned to such term in the recitals hereto.

"3L RCF Loan Documents" has the meaning assigned to such term in the recitals hereto.

"3L RCF Obligations" has the meaning assigned to such term in the recitals hereto.

"3L Secured Party" has the meaning assigned to such term in the recitals hereto.

"Action" has the meaning specified therefor in Section 12.12.

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Accounts" means one or more accounts designated by the Administrative Agent at a bank designated by the Administrative Agent from time to time as the accounts into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

"Adverse Proceeding" means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Loan Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of any Loan Party or any of its Subsidiaries, threatened against or affecting any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, (i) the determination of whether a Person is an "Affiliate" of another Person for purposes of this Agreement shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder and (ii) none of the Lenders party hereto as of the date hereof shall be deemed an Affiliate of the Borrower for purposes of this Agreement solely by virtue of their Loans and related commitment. Any reference to an Affiliate of the Administrative Agent shall include any investment fund or account managed or advised by the Administrative Agent or any of its representatives or Affiliates and conversely any Affiliate of any investment fund or account managed or advised by the Administrative Agent or any of its representatives or Affiliates shall include the Administrative Agent.

"Agent" and "Agents" have the respective meanings specified therefor in the preamble hereto.

"Agent Fee Letter" means [that certain fee letter, dated as of the date hereof, by and among the Agents and the Borrower.]

"Agreement" means this Superpriority Secured Debtor in Possession Credit Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Anti-Corruption Laws" means all applicable laws, rules, regulations and orders relating to the prevention of corruption and bribery, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, and all national and international laws, rules, regulations and orders enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"Anti-Money Laundering Laws" means all laws, rules, regulations and orders relating to terrorism or money laundering, including Executive Order No. 13224, the USA PATRIOT Act and the laws, rules, regulations and orders comprising or implementing the Bank Secrecy Act.

"Approved Budget" means each of (a) the Initial Budget and (b) any subsequent 13-Week Budget delivered by the Borrower and approved by the Required Lenders in their sole discretion, in each case, pursuant to Section 7.03.

"Approved Deviation" shall have the meaning specified in Section 7.03(c).

"Asset Sale Proceeds" shall have the meaning specified in Section 7.09(a).

"Asset Sale Prepayment" shall have the meaning specified in Section 7.09(a).

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Administrative Agent (and the Collateral Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form acceptable to the Administrative Agent or such other form approved by the Administrative Agent.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

"Automatic Stay" means the automatic stay imposed under Section 362 of the Bankruptcy Code.

"Avoidance Action Proceeds" has the meaning specified therefor in Section 4.09(a).

"Avoidance Actions" has the meaning specified therefor in Section 4.09(a).

"Bankruptcy Code" has the meaning assigned to such term in the recitals hereto.

"Bankruptcy Court" has the meaning assigned to such term in the recitals hereto.

"Board of Directors" means:

(a) with respect to a corporation, the board of directors of the corporation or a duly authorized committee thereof;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company managed by the member or members, the managing member or members or any controlling committee of managing members thereof;

(d) with respect to a limited liability company managed by a manager or managers, the manager or managers and any controlling committee of managers; and

(e) with respect to any other person, the board or committee of such person serving a similar function.

"Borrower" has the meaning specified therefor in the preamble hereto.

"Budget Event" means any of the following:

(a) the actual amount of aggregate cumulative operating disbursements plus capital expenditure disbursements during any Budget Testing Period shall exceed the projected cumulative operating disbursements plus capital expenditure disbursements in the Approved Budget for such Budget Testing Period by more than 10%; or

(b) the aggregate amount of actual receipts during any Budget Testing Period shall be less than 85% of the aggregate cumulative receipts in the Approved Budget for such Budget Testing Period (the variances described in (a) and (b) of this definition, the "Permitted Variance").

"Budget Testing Date" means Friday of each alternating calendar week, commencing on the first Friday occurring after the Petition Date.

"Budget Testing Period" means, the rolling four-week period ending on the Sunday immediately preceding such Budget Testing Date.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close by law.

"Capital Stock" with respect to any Person means any and all shares, interests, rights, participations or other equivalents of or interests in (however designated) stock, limited liability company interests or other equity interests (including partnership or membership interests) issued by such Person that confer the right to receive a share of the profits and losses of, or distributions of, such Person, and any and all warrants, rights or options to purchase or other

arrangements or rights to acquire any of the foregoing, but "Capital Stock" shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition, whether or not such debt securities include any right of participation with Capital Stock.

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

"Carve Out" has the meaning set forth in the then applicable DIP Order.

"Carve Out Trigger Notice" has the meaning set forth in the then applicable DIP Order.

"Cash Collateral" has the meaning assigned to such term in section 363(a) of the Bankruptcy Code.

"Cash Equivalents" means (i) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within one year from the date of acquisition thereof; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the three highest ratings obtainable from either S&P or Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or the District of Columbia or any U.S. branch of a foreign bank or by a bank organized under the laws of any foreign country recognized by the United States of America, in each case having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000 (or the foreign currency equivalent thereof); (v) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (iv) above; and (vi) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (i) through (v) above.

"Ch. 11 Plan" means "Plan" as such term is defined in the DIP Order.

"Challenge Period" has the meaning specified in the Interim DIP Order.

"Change of Control" means (1) any Combination Transaction as a result of which holders of the Common Equity of the Parent immediately prior to such Combination Transaction own, directly or indirectly, in the aggregate, less than 30% of the voting power of the Common Equity of the continuing, surviving, or succeeding entity or the parent thereof immediately after

such Combination Transaction, unless such transaction results in a Permitted Holder owning, directly or indirectly, in the aggregate, 30% or more of the voting power of the Common Equity of the continuing, surviving, or succeeding entity or the parent thereof immediately after such Combination Transaction, (2) any transaction or series of related transactions in which in excess of 30% of the voting power of the Common Equity of the Parent is transferred to any "person" or "group" within the meaning of Section 13(d) of the Exchange Act, or any such "person" or "group", other than, in each case, a Permitted Holder, becomes the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act) of more than 30% of the voting power of the Common Equity of the Parent, or (3) any sale, lease, or other disposition of all or substantially all of the consolidated assets of the Parent and its Subsidiaries, taken as a whole, to any Person other than one of the Parent's direct or indirect Wholly-Owned Subsidiaries; provided with respect to clauses (1) and (2), the acquisition by the Lenders of Common Equity shall not be deemed a Change of Control.

"Chapter 11 Cases" has the meaning assigned to such term in the recitals to this Agreement.

"Code" means Title 26 of the United States Code entitled "Internal Revenue Code," as now and hereafter in effect, or any successor statute.

"Collateral" has the meaning specified therefor in Section 4.09(a).

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Combination Transaction" means with respect to a Person any consolidation or merger of such Person with or into any other corporation or other entity or person (including any acquisition, purchase or similar transaction of or involving such Person by another Person), or any other reorganization, in each case, excluding any transaction effected solely for the purpose of reincorporating into another jurisdiction.

"Commitments" means, with respect to each Lender, the commitment of such Lender to make Loans to the Borrower and the other Loan Parties in the amount set forth in Schedule I hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement. The aggregate amount of Commitments existing on the Effective Date shall be $[38,000,000].

"Committees" means collectively, an official committee of unsecured creditors, if any, and any other official committee appointed or approved in any Chapter 11 Case and each of such committees shall be referred to herein as a "Committee".

"Common Equity" of any Person means Capital Stock of such Person that is generally entitled to vote in the election of members of the Board of Directors of such Person.

"Common Stock" means the Parent's common stock, par value $0.001 per share.

"Contingent Indemnity Obligations" means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

"Contract" means all written contracts and agreements between any Grantor and any other Person (in each case, whether third party or intercompany) as the same may be amended, extended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time, including (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder and (iv) all rights of any Grantor to terminate and to perform and compel performance of, such contracts and to exercise all remedies thereunder.

"Contractual Obligation" means, as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Controlled Group" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) which, together with the Borrower and its Subsidiaries are treated as a single employer under Section 414 of the Code.

"Copyrights" means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof and all other rights whatsoever accruing thereunder or pertaining thereto.

"Debtor Relief Law" means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

"Debtor Professionals" means [__].[2]

"Debtors" has the meaning specified in the recitals hereto.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

[2] NTD: to be defined.

"Default Notice Period" has the meaning specified therefor in Section 9.01.

"DIP Credit Facility Super-Priority Claims" has the meaning set forth in the then applicable DIP Order.

"DIP Facility" has the meaning assigned to such term in the recitals to this Agreement.

"DIP Funding Date" means the Initial DIP Funding Date or the Second DIP Funding Date, as applicable.

"DIP Order" means the Interim DIP Order or the Final DIP Order, as applicable, or each of them as the context may require.

"DIP Proceeds" means the proceeds received by the Borrower and the other Loan Parties from the Loans.

"DIP Termination Date" means the earliest of (i) the Stated Maturity Date, (ii) if the Final DIP Order has not been entered, forty-five (45) calendar days after the Petition Date, (iii) the date of acceleration of the Loans and the termination of the Commitments upon the occurrence and during the continuation of an Event of Default (at the direction of the Required Lenders) in accordance with the terms of this Agreement and the other Loan Documents, (iv) the effective date of any Chapter 11 plan, (v) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (vi) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (vii) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code and (viii) the date an order is entered in any bankruptcy case appointing a Chapter 11 trustee or examiner with enlarged powers.

"Disposition" means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division, an issuance of Capital Stock, or otherwise) of any property, businesses or assets of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including Capital Stock of any Subsidiary, by any Person (including any sale and leaseback transaction), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith (including, without limitation, any rights to any residual payment stream with respect thereto). For purposes of this definition, "Disposition" shall include (a) the sale or other disposition for value of any contracts or (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, in each case by Company, Parent or any Subsidiary. "Disposition" shall not include the expiration of a lease by its terms or the non-renewal of a lease.

Notwithstanding the preceding, each of the following items will be deemed not to be a Disposition:

(1) Any Investment that is a Permitted Investment;

(2) the sale, lease or other transfer of products, raw materials, feedstock, services or accounts receivable in the ordinary course of business;

(3) the sale or other disposition of Cash Equivalents;

(4) licensing and sub-licensing by any Loan Party and/or any Subsidiary of Intellectual Property permitted by Section 7.11 hereof;

(5) any sale, abandonment or other disposition of damaged, worn-out, redundant or obsolete assets in the ordinary course of business;

(6) the granting of Liens not prohibited by this Agreement;

(7) a Restricted Payment that does not violate the terms of this Agreement;

(8) any Permitted Equity Raise; and

(9) any issuance of Permitted Disqualified Stock or awards exercisable for Common Stock pursuant to any equity incentive plan approved by the Board of Directors of the Borrower.

"Disqualified Stock" means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Capital Stock that is not Disqualified Stock and/or cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder of the Capital Stock (other than solely for Capital Stock that is not Disqualified Stock and/or cash in lieu of fractional shares), in whole or in part, (c) requires the payment of any cash dividend or any other scheduled cash payment, or (d) is or becomes convertible into or exchangeable for Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 7.05 of this Agreement) or any other Capital Stock that would constitute Disqualified Stock, in each case, prior to the date that is 90 days after the date on which the Loans mature. Notwithstanding the preceding sentence, only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock. For the avoidance of doubt, the Common Stock as of the date hereof is not Disqualified Stock.

"Dividing Person" shall have the meaning specified in the definition of Division.

"Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Dollar," "Dollars" and the symbol "$" each means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"Early Termination Fee" means, as of any date of determination, with respect to any Loans prepaid, repaid or accelerated, an amount equal to the aggregate amount of interest which would have otherwise been payable on the principal amount of the Loans prepaid, repaid, or accelerated (as applicable) on such date of such prepayment, repayment or acceleration (as applicable) through the Stated Maturity Date (and for the avoidance of doubt, for purposes of such calculation, on each Interest Payment Date occurring after the date of such prepayment or repayment (or requirement to prepay or repay) through the Stated Maturity Date, interest with respect to such Loans shall be deemed to be capitalized in accordance with Section 2.04(c) by adding all PIK Interest with respect to such Loans to the outstanding principal amount of such Loans on each such Interest Payment Date) discounted at the Treasury Rate plus 0.50%.

"Effective Date" has the meaning specified therefor in Section 5.01.

"Equity/Debt Prepayment" has the meaning specified therefor in Section 7.09(c).

"Equity Issuance" means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Capital Stock or (b) the receipt by the Parent of any cash capital contributions.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means each member of the Controlled Group.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the failure of a Plan to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; or (f) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, in either case, concerning the imposition upon the Borrower or any of its ERISA Affiliates of withdrawal liability or a determination that a Multiemployer Plan is, or is reasonably expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Erroneous Distribution" has the meaning specified therefor in Section 10.18.

"Event of Default" has the meaning specified therefor in Section 9.01.

"Excess Net Insurance/Condemnation Proceeds" shall have the meaning specified in Section 7.09(b).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Equity Interests" means any of the outstanding Capital Stock of a Foreign Subsidiary which is not a Guarantor in excess of 65% of the voting power of all classes of Capital Stock of such Subsidiary entitled to vote.

"Excluded Property" has the meaning specified therefor in Section 4.09(a).

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding (including backup withholding) Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment (or otherwise in any Loan Document) pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.07, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.07(e) and (d) any withholding Taxes imposed under FATCA.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Extraordinary Receipts" means any cash received by the Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of Asset Sale Proceeds or Excess Net Insurance/Condemnation Proceeds, and not any client contract fees which are received in a manner consistent with past practices), including, without limitation, (a) material foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are immediately payable to a Person that is not the Borrower or any of its Subsidiaries in accordance with applicable law or with Contractual Obligations entered into in the ordinary course of business), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries) and (g) any purchase price adjustment received in connection with any purchase agreement.

"Extraordinary Receipts Prepayment" has the meaning specified therefor in Section 7.09(d).

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset or group of assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as determined in good faith by the Board of Directors of the Parent or the Borrower.

["FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal, tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Internal Revenue Code and the Treasury Regulations thereunder.]

"Final DIP Order" means a final order entered by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of the Interim DIP Order (with only such modifications thereto as are reasonably necessary to convert the Interim DIP Order to a final order and other modifications as are satisfactory in form and substance to the Debtors and the Administrative Agent at the direction of the Required Lenders in their sole discretion).

"Foreign Lender" means a Lender that is not a U.S. Person.

"Foreign Subsidiary" means any Subsidiary of the Borrower that is not a Domestic Subsidiary.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"Global Intercompany Note" means that certain global intercompany note, dated as of the date hereof, executed and delivered by each Loan Party and their respective Subsidiaries as such global intercompany note may be amended, supplemented or otherwise modified from time to time.

"Governing Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

"Governmental Authority" means any nation or government, any foreign, Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision

thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Grantors" means the Borrower, each Guarantor and each other Person that executes a supplement, in form and substance acceptable to Administrative Agent and becomes an additional Grantor hereunder.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or any other obligation of any other Person:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(b) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness against loss in respect thereof (in whole or in part);

provided, *however*, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified therefor in Section 11.01.

"Guarantor" means (a) the Parent, (b) each Subsidiary of the Borrower listed as a "Guarantor" on the signature pages hereto, and (c) each Person which guarantees all or any part of the Obligations.

"Guaranty" means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

"Hedging Obligations" means, with respect to any specified Person, the obligations of such Person under:

(a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(b) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(c) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

"Highest Lawful Rate" means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted

for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"incur" shall have the meaning specified in Section 7.05.

"Indebtedness" means, with respect to any Person on any date of determination (without duplication):

(a) the principal (or, with respect to such Indebtedness issued with original issue discount, the accreted value) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person;

(c) all obligations of such Person for the deferred purchase price of property or services due more than six months after such property or services are acquired or taken, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement to the extent of the value of such property (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, surety bonds, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 30th day following payment on the letter of credit);

(e) to the extent not otherwise included in this definition, net payment obligations under any Hedging Obligations of such Person; and

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

if, and to the extent, with respect to clauses (a), (b), (c) and (e) only, any of the preceding items referred to in clauses (a), (b), (c) and (e) would appear as a liability upon the balance sheet of the specified Person in accordance with GAAP.

"Indemnified Matters" has the meaning specified therefor in Section 12.15(a).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitees" has the meaning specified therefor in Section 12.15(a).

"Initial Budget" means a 13-Week Budget in the form set forth in Exhibit A hereto and also attached as an exhibit to the Interim DIP Order. Until supplemented or replaced pursuant to Section 7.03 and approved (or deemed approved) by the Administrative Agent at the direction of the Required Lenders in accordance with the terms set forth in Section 7.03, the Initial Budget shall constitute the Approved Budget.

"Initial DIP Funding Date" has the meaning provided in Section 5.02 hereof.

"Initial Pledged Shares" means the Capital Stock of each Issuer beneficially owned by any Grantor on the date hereof and identified in Schedule VIII. For the avoidance of doubt, Initial Pledged Shares shall not include the Excluded Equity Interests (if any).

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Insurance" means all property and casualty insurance policies covering any or all of the Collateral (regardless of whether Collateral Agent is the loss payee thereof).

"Insurance/Condemnation Prepayment" shall have the meaning specified in Section 7.09(b).

"Intellectual Property" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"Interest Payment Date" means last Business Day of each month.

"Interest Rate" means 8.00% per annum.

"Interim DIP Order" means the interim order entered by the Bankruptcy Court in the Chapter 11 Cases (as the same may be amended, supplemented, or modified form time to time after entry thereof in a manner satisfactory to the Required Lenders and (solely with respect to its own treatment) the Administrative Agent, in each case, in their sole discretion) authorizing and approving, among other things, the DIP Facility, use of cash collateral and the Transactions, which interim order is in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders in their sole discretion.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"Investment" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates of such Person) in the form of loans (including Guarantees) and advances, or other extension of credit, capital contributions (including by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), purchases or other acquisitions for consideration of Capital Stock, Indebtedness or other similar instruments or other securities (other than advances or extensions of credit to customers in the ordinary course of business that are in conformity with GAAP recorded as accounts receivable on the balance sheet of Parent, the Borrower or its Subsidiaries). The amount of all Investments (other than cash) will be the fair market value (as determined in good faith by the Board of Directors of Parent) on the date of the Investment.

"Issuers" means, collectively, (a) the respective Persons identified on Schedule VIII under the caption "Issuer", (b) any Person that shall at any time be a Subsidiary of any Grantor and (x) the issuer of any Capital Stock hereafter owned by any Grantor.

"Known Event" means the commencement and continuation of the Chapter 11 Cases, the events, circumstances and conditions leading up to the Chapter 11 Cases publicly disclosed or otherwise disclosed in writing to the Administrative Agent and the Lenders, the effects of the Debtors' bankruptcy publicly disclosed or otherwise disclosed in writing to the Administrative Agent and the Lenders, the conditions in which the Debtors operate as existing on the Effective Date publicly disclosed or otherwise disclosed in writing to the Administrative Agent and the Lenders, and/or the consummation of transactions contemplated by the Debtors' "first day" pleadings reviewed by the Required Lenders.

"Lender" has the meaning specified therefor in the preamble hereto.

"Lien" means, with respect to any asset or right, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge, security assignment or security interest in or on such asset or right, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or right.

"Loans" means the term loans to be made on or after the Effective Date and prior to the DIP Termination Date in one drawing or two drawings in an aggregate principal amount not to exceed the Total Commitment.

"Loan Document" means this Agreement (including the Guaranty hereunder), the Security Documents, the Global Intercompany Note, any joinder agreement, together with any other agreements, instruments or other documents entered into in connection with the foregoing or evidencing or securing the Loans and/or any other Obligations, each as may be amended, restated, supplemented or otherwise modified from time to time, in each case, as amended, supplemented or otherwise modified, renewed or replaced from time to time.

"Loan Party" means the Borrower and each Guarantor.

"Mandatory Prepayment" means any Asset Sale Prepayment, Insurance/Condemnation Prepayment, Equity/Debt Prepayment or Extraordinary Receipts Prepayment.

"Margin Stock" shall have the meaning provided in Regulation U.

"Material Adverse Effect" means a material adverse effect on any of (i) the business, operations, properties or condition (financial or otherwise) of the Loan Parties and their subsidiaries from the Petition Date, collectively; provided, however, that the dissolution of Appgate Germany GmbH shall not constitute a material adverse effect for purposes of this clause (i), (ii) the legality, validity or enforceability of any Loan Documents, the Interim DIP Order or the Final DIP Order, (iii) the ability of the Loan Parties, taken as a whole, to perform any of their respective payment obligations under any Loan Document, (iv) the validity, perfection or priority of the Liens granted pursuant to the Loan Documents, the Interim DIP Order or the Final DIP Order, or (v) the rights and remedies of the Administrative Agent, Collateral Agent and the Lenders under the Loan Documents taken as a whole; except, in each case of the foregoing clauses (i) through (v), those events, circumstances or conditions that result from the commencement and continuation of the Chapter 11 Cases or Known Events.

"Material Indebtedness" means the Subordinated Indebtedness.

"Material Intellectual Property" means Intellectual Property owned by, or exclusively licensed to, any Loan Party or any Subsidiary that is material to the business of Loan Parties and/or their respective Subsidiaries.

"Milestone" means the milestones set forth Schedule XIV attached hereto.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding the six calendar years.

"Net Cash Proceeds" means with respect to any issuance or incurrence of any Indebtedness, any Equity Issuance, any Disposition or the receipt of any Extraordinary Receipts by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) minus (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents or Indebtedness that is secured by a Lien that ranks pari passu with or junior to the Liens securing the Obligations), (B) any bona fide direct costs incurred by the Borrower or such Subsidiary in connection with such transaction, (C) any taxes that are or may be payable in respect of the relevant transaction.

"Net Insurance/Condemnation Proceeds" means an amount equal to (i) any payments or proceeds received by any Loan Party or any of its Subsidiaries under (a) under any casualty insurance policy in respect of a covered loss thereunder, (b) as a result of the taking of any assets of the Borrower, Parent or any Subsidiary by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser

with such power under threat of such a taking or (c) under any business interruption or similar insurance policy in respect of a covered loss thereunder, minus (ii) (a) any actual and reasonable costs incurred by any Loan Party or any Subsidiary in connection with the adjustment or settlement of any claims of any Loan Party or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including any taxes reasonably estimated to be actually payable in respect of any gain on such sale within one year of the date of such transaction; *provided* that, if the amount of any estimated taxes pursuant to subclause (ii)(b) exceeds the amount of taxes actually required to be paid in cash, such amount shall be considered Net Insurance/Condemnation Proceeds.

"Non-Guarantor Sublimit" means $3,000,000.

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees including the Early Termination Fee), premiums attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Officer" means, with respect to the Borrower, the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Commercial Officer, the Chief Integration Officer, the Chief Accounting Officer, the Controller, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President").

"Officer's Certificate" means a certificate that is signed by any Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders.

"Operating Expenses" means all reasonable cash expenses actually incurred by a Person in the ordinary course of business with respect to (a) rent and utility costs, (b) vendor expenses, (c) equipment and inventory costs, (d) advertising and marketing costs, (e) payroll, wages, salaries and employee benefits costs (including with respect to country-specific labor and human resources requirements), (f) insurance, (g) Taxes, (h) legal, statutory and regulatory fees and (i) employee reimbursements for reimbursable business expenses.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan Document).

"Other Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Other Currency" has the meaning specified therefor in Section 12.23.

"Paid in Full" or "Payment in Full" means, with respect to any Obligations, the full and indefeasible payment thereof in cash (or, solely to the extent expressly provided otherwise in the Ch. 11 Plan, such other forms of consideration under and in accordance with the Ch. 11 Plan) in accordance with the terms of the applicable Loan Documents, including fees (including without limitation, the Early Termination Fee (if any), service fees and professional fees), interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, other charges and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

"Participant Register" has the meaning specified therefor in Section 12.07(i).

"Patents" means all patents and patent applications, including the inventions and improvements described and claimed therein together with the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, all income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, all damages and payments for past or future infringements thereof and rights to sue therefor, and all rights corresponding thereto throughout the world.

"Payment Office" means the Administrative Agent's office located at [_____], or at such other office, offices, account or accounts of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Borrower.

"Parent" means Appgate, Inc., a Delaware corporation.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Permitted Disqualified Stock" means any Disqualified Stock issued pursuant to existing contractual obligations as of the date of this Agreement.

"Permitted Equity Raise" means the sale and issuance by the Parent of Capital Stock (other than Disqualified Stock) of the Parent in one or a series of transactions, which transactions are subject to the rights of the Holder (as defined in the Note Purchase Agreement (as

defined in the 1L Convertible NIA)) under Section 3.8 of the Note Purchase Agreement, subject to the terms thereof.

"Permitted Holder" means (i) Manuel D. Medina, Medina Capital Partners, LP or any of their respective Affiliates and (ii) SIS Holdings L.P. or any of its Affiliates or equityholders as of the date hereof.

"Permitted Indebtedness" means:

(a) Indebtedness of the Parent, the Borrower and their Subsidiaries existing on the date hereof and (solely in the case of any Foreign Subsidiary) listed on Schedule II hereto, and any Permitted Refinancing Indebtedness in respect thereof;

(b) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(c) [reserved];

(d) Hedging Obligations in the ordinary course of business;

(e) Indebtedness represented by (x) Capital Lease Obligations or (y) Purchase Money Obligations, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (e), not to exceed $100,000 at any time outstanding;

(f) intercompany Indebtedness among the Loan Parties (other than Parent) and/or the Subsidiaries, in each case (i) to the extent such Persons and the relevant Indebtedness is subject to the Global Intercompany Note and (ii) so long as any amount owing by a Subsidiary that is not a Guarantor to the Borrower or a Guarantor, do not in the aggregate, when taken together with amounts utilized with respect to items referenced in the proviso in clause (a) in the definition of Permitted Investments, exceed the Non-Guarantor Sublimit; provided that intercompany Indebtedness under the preceding clause (ii) may only be incurred to fund Operating Expenses of the recipient of any loans and, to the extent to the extent in compliance with the Approved Budget.

(g) Guarantees by any Loan Party or Subsidiary of Indebtedness that is permitted to be incurred by Section 7.05, provided that if the Indebtedness being guaranteed is subordinated in right of payment to the Obligations, such Guarantee is subordinated in right of payment to the Obligations to the same extent as the Indebtedness so guaranteed;

(h) Indebtedness arising from (i) netting services, overdraft protections and similar arrangements in respect of deposit accounts and (ii) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, in each case, so long as such Indebtedness is covered within five Business Days of receiving notice thereof;

(i) obligations consisting of take-or-pay obligations contained in supply arrangements incurred in the ordinary course of business;

(j) Indebtedness in respect of (A) workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations, (B) the financing of insurance premiums or self-insurance obligations, (C) indemnity, bid, performance, warranty, release, appeal, surety, customs and similar bonds, letters of credit and banker's acceptances for operating purposes, and (D) letters of credit issued or incurred to support the purchase of supplies, raw materials and equipment in the ordinary course of business; and

(k) working capital lines of the Borrower and its Subsidiaries in an amount not to exceed $100,000 in the aggregate at any one time outstanding;

"Permitted Investments" means:

(a) any Investment in any Loan Party (other than Parent) or Subsidiary; provided that any Investment by the Borrower or a Guarantor in a Subsidiary that is not a Guarantor, or by the Borrower or a Domestic Subsidiary that is a Guarantor in a Foreign Subsidiary, shall only be made to fund Operating Expenses of the recipient of the relevant Investment and the aggregate amount of such Investments when taken together with amounts utilized with respect to items referenced in clause (f)(ii) in the definition of Permitted Indebtedness shall not at any time exceed the Non-Guarantor Sublimit for the applicable period; provided that any Investment made after the Effective Date by the Borrower or a Guarantor in a Subsidiary that is not a Guarantor, or by the Borrower or a Domestic Subsidiary that is a Guarantor in a Foreign Subsidiary may be only made if in compliance with the Approved Budget.

(b) Investments represented by Hedging Obligations;

(c) [reserved];

(d) any Guarantee of Indebtedness permitted to be incurred pursuant to Section 7.05 of this Agreement; and

(e) Investments of the Borrower and its Subsidiaries existing on the date hereof and (solely in the case of any Foreign Subsidiary) listed on Schedule II hereto.

"Permitted Liens" means:

(a) Liens in favor of any Loan Party or Subsidiary;

(b) Liens to secure Capital Lease Obligations and Purchase Money Obligations incurred pursuant to clause (e) of Permitted Indebtedness, provided that, in each case, any such Lien may not extend to any property of the Borrower, other than the property acquired, constructed, improved or leased with the proceeds of such Indebtedness and any additions, parts, attachments, fixtures, leasehold improvements, proceeds, improvements or accessions related thereto;

(c) Liens for Taxes, assessments or governmental charges or levies if the same shall not at the time be delinquent for more than 30 days or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings, provided that any reserve or other appropriate provision required in accordance with GAAP shall have been made therefor;

(d) Liens imposed by law or arising by operation of law, including without limitation, landlords', materialmen's, repairmen's, mailmen's, suppliers', vendors', carriers', warehousemen's and mechanics' Liens and other similar Liens, Liens for master's and crew's wages and other similar laws, arising in the ordinary course of business and for payment obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(e) pledges, deposits or Liens in connection with workers' compensation, professional liability insurance, unemployment insurance and other social security and other similar legislation and or other insurance-related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements);

(f) Liens incurred in the ordinary course of business to secure performance of obligations with respect to letters of credit, bank guarantees, statutory or regulatory requirements, performance or completion bonds, performance of return-of-money bonds, surety or appeal bonds, or other obligations of a like nature and incurred in connection with port authority facilities projects or otherwise in the ordinary course of business;

(g) Liens incurred or pledges or deposits made under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which the Borrower or any Subsidiary is party, or deposits to secure public or statutory obligations, or deposits for the payment of rent, in each case incurred in the ordinary course of business;

(h) easements, building restrictions, zoning restrictions, survey exceptions, encumbrances, title deficiencies, easements or reservations of rights of others for licenses, rights of way and similar purposes and such other encumbrances or charges against real property as do not materially interfere with the Borrower's use of the real property;

(i) Liens granted by any Loan Party or any Subsidiary and existing on the date hereof and (solely in the case of any Foreign Subsidiary) listed on Schedule II hereto;

(j) judgment Liens with respect to judgments, decrees or orders not giving rise to an Event of Default so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been initiated for the review of such judgments, decrees or orders shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(k) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of letters of credit, bank guarantees or banker's acceptances issued or credited for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(l) Liens securing obligations of any Loan Party or Subsidiary under Hedging Obligations incurred in the ordinary course of business;

(m) Liens arising under conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens securing the Obligations;

(p) (i) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries, (ii) any interest or title of a lessor under any leases or subleases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business, and (iii) any interest of co-sponsors, co-owners or co-developers of Intellectual Property;

(q) (i) Liens of a collection bank on items in the course of collection, (ii) Liens attaching to commodity trading accounts or other brokerage accounts in the ordinary course of business, (iii) bankers' Liens and other Liens in favor of banking institutions by law or contract encumbering deposits which are customary in the banking industry and (iv) Liens securing cash management obligations arising in the ordinary course of business;

(r) Liens arising from UCC financing statements regarding operating leases, joint venture agreements, transfers of accounts or transfers of chattel paper entered into in the ordinary course of business;

(s) Liens arising by law or contract on insurance policies and the proceeds thereof to secure premiums thereunder; and

(t) deposits as security and liens securing surety and appeal bonds, letters of credit and similar obligations in connection with contested taxes or contested import or customs duties.

"Permitted Refinancing Indebtedness" means any Indebtedness of any Loan Party or Subsidiary issued in exchange for, or the net proceeds of which are used to renew, refund, replace, defease or discharge other Indebtedness of any Loan Party or Subsidiary (other than intercompany Indebtedness); *provided* that:

(a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);

(b) such Permitted Refinancing Indebtedness has (a) a final maturity date not earlier than the final maturity date of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged and (b) a weighted average life to maturity (i) equal to or greater than the weighted average life to maturity of the Indebtedness being renewed, refunded,

refinanced, replaced, defeased or discharged or (ii) at least more than 90 days after the final maturity date of the Loans; and

(c) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Loans, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loans on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(d) is not secured by a Lien on any assets other than the collateral securing the Indebtedness being refinanced or extended, except to the extent that such additional assets or collateral is also pledged to the Secured Parties;

(e) the obligors of which are the same as the obligors of the Indebtedness being refinanced or extended, except to the extent that such additional obligors also become Guarantors hereunder; and

(f) is otherwise on terms no less favorable to the Borrower and its Subsidiaries, taken as a whole, than those of the Indebtedness being refinanced or extended, in each case unless (1) the Lenders also receive the benefit of such more restrictive terms, (2) any such provisions apply after the Stated Maturity Date at the time of such refinancing, or (3) such terms shall be reasonably satisfactory to the Lenders;

provided that a certificate of applicable Loan Party or Subsidiary delivered to the Lenders and the Administrative Agent at least ten Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the applicable Loan Party or Subsidiary has determined in good faith that such terms and conditions satisfy the foregoing requirements, shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Lenders notify the Borrower within such ten Business Days period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees).

"Permitted Variance" shall have the meaning set forth in the defined term "Budget Event".

"Person" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"Petition Date" has the meaning assigned to such term in the recitals.

"PIK Interest" has the meaning assigned to such term in Section 2.04(c).

"Plan" means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 or Section 430 of the Code that either (a) is maintained by the Borrower or an ERISA Affiliate for employees of the Borrower or an ERISA Affiliate or (b) is maintained pursuant to a collective bargaining agreement or any other

arrangement under which more than one employer makes contributions and, in the case of either (a) or (b), to which the Borrower or an ERISA Affiliate is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions or has had any liability

"Pledged Shares" means, collectively, the Initial Pledges Shares and all Capital Stock of any Issuer now or hereafter owned by any Grantor, together in each case with (a) all certificates representing the same, (b) all Capital Stock, securities, moneys or other property representing a dividend on or a distribution or return of capital on or in respect of the Pledged Shares, or resulting from a split-up, revision, reclassification or other like change of the Pledged Shares or otherwise received in exchange therefor, and any warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Shares, and (c) without prejudice to any provision of any of the Loan Documents prohibiting any merger or consolidation by an Issuer, all Capital Stock of any successor entity of any such merger or consolidation. For the avoidance of doubt, Pledged Shares shall not include the Excluded Equity Interests.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

"Prepetition Collateral" has the meaning specified in the Interim DIP Order.

"Prepetition Debt Documents" has the meaning specified in the recitals hereto.

"Prepetition Liens" has the meaning specified in Section 7.25.

"Prepetition Obligations" has the meaning specified in the recitals hereto.

"Prepetition Secured Agents" has the meaning specified in the recitals hereto.

"Prepetition Secured Collateral" means Collateral as defined in each of the Prepetition Debt Documents.

"Prepetition Secured Parties" has the meaning specified in the recitals hereto.

"Premises" shall have the meaning specified in Section 7.18.

"Pro Rata Share" means, with respect to:

(a) a Lender's obligation to make the Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Commitments, by (ii) the Total Commitment, provided that if the Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Loan and the denominator shall be the aggregate unpaid principal amount of the Loan, and

(b) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the sum of such Lender's unpaid principal amount of such Lender's portion of the Loan, by (ii) the sum of the aggregate unpaid principal amount of the Loan.

"Purchase Money Obligations" means any Indebtedness incurred to finance or refinance the acquisition, design, leasing, construction, installation or improvement of property (real or personal), plant, equipment or other assets, and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise, in each case, within 180 days of such acquisition, design, leasing, construction, installation or improvement.

"Recipient" means any Agent, any Lender, as applicable.

"Register" has the meaning specified therefor in Section 12.07(f).

"Registered Loans" has the meaning specified therefor in Section 12.07(f).

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the direct and indirect equity holders, partners, directors, officers, employees, agents, consultants, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Required Lenders" means Lenders whose Pro Rata Shares (calculated in accordance with both clauses (a) and (b) of the definition thereof) of the unused Total Commitments and of the Loans aggregate more than 50.0% of the sum of the unused Total Commitments and the Loans.

"Required Prepayment Date" has the meaning specified therefor in Section 7.09(e)

"Resignation Effective Date" has the meaning specified therefor in Section 10.07.

"Restricted Investment" means any Investment, directly or indirectly, in any Person, other than a Permitted Investment.

"Restricted Payments" shall have the meaning specified in Section 7.10.

"RSA" means that certain Restructuring Support Agreement dated as of [May 2, 2024], by and among the Consenting Stakeholders (as defined in the RSA) and the Loan Parties.

"Sanctioned Country" means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC's Specially Designated Nationals and Blocked Persons List and OFAC's Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any of: (a) the U.S. government, including OFAC and the U.S. Department of State; (b) the United Nations Security Council; (c) the European Union and each of its member states; (d) the United Kingdom, including the Office of Financial Sanctions Implementation of His Majesty's Treasury; or (e) any other relevant national or supra-national Governmental Authority.

"Second DIP Funding Date" has the meaning provided in Section 5.03 hereof.

"Secured Parties" means the Administrative Agent, the Collateral Agent, Lenders and any other holder from time to time of any of the Obligations and, in each case, their respective successors and assigns.

"Security Documents" means all security agreements, intercreditor agreements, pledge agreements, collateral assignments, mortgages, collateral agency agreements, debentures, deposit account control agreements, securities account control agreements, commodities account control agreements or other grants or transfers for security executed and delivered by any Loan Party creating (or purporting to create) a Lien upon Collateral for the benefit of the Secured Parties to secure the Obligations, in each case, as amended, supplemented, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the terms of this Agreement.

"Significant Subsidiary" means a Subsidiary of the Borrower that meets the definition of "significant subsidiary" in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

"Stated Maturity Date" means the date that is one hundred twenty (120) calendar days after the Petition Date.

"Subordinated Indebtedness" means, with respect to the Obligations, any Indebtedness of the Borrower which is contractually subordinated to the Obligations subject to (i) if unsecured, a subordination agreement reasonably satisfactory to the Required Lenders, or (ii) if secured, an intercreditor agreement satisfactory to the Required Lenders.

"Subsidiary" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of

Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person. Unless otherwise specified, all references herein to Subsidiaries shall be deemed to refer to Subsidiaries of Parent.

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding, including backup withholding (together with interest, penalties and other additions thereto) in the nature of a tax imposed by any Governmental Authority.

"Total Commitment" means the sum of the amounts of the Lenders' Commitments.

"Treasury Rate" means, with respect to any prepayment, repayment or acceleration of Loans, a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by the Required Lenders on the date falling three Business Days prior to the date of such prepayment, repayment or acceleration (as applicable) to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities most nearly equal to the period from the date of such prepayment, repayment or acceleration to and including the Stated Maturity Date.

"Trademarks" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including all renewals of trademark and service mark registrations, all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and all rights corresponding thereto throughout the world.

"Transactions" means, collectively, (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party, (b) the commencement and filing of the Chapter 11 Cases, (c) the transactions contemplated by the RSA and (d) the payment of fees and expenses in connection with the consummation of the Transactions.

"Uniform Commercial Code" or "UCC" means the New York Uniform Commercial Code (or any similar or equivalent statute or law) as in effect in any applicable jurisdiction.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

"USPTO" means the United States Patent and Trademark Office.

"U.S. Tax Compliance Certificate" shall have the meaning specified in Section 2.07(e)(ii)(B).

"Vice President" shall have the meaning specified in the definition of "Officer".

"Waivable Prepayment" shall have the meaning specified in Section 7.09(e).

"Wholly-Owned Subsidiary" means, with respect to any Person, any Subsidiary of such Person, 100% of the Capital Stock of which is owned by such Person (other than directors' qualifying shares or shares required by applicable law to be held by third persons).

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such

covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents (at the direction of the Required Lenders) or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents (at the direction of the Required Lenders)) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents (at the direction of the Required Lenders) or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time).

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to New York City Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.

Section 1.06 Obligation to Make Payments in Dollars. All payments to be made by any Loan Party of principal, interest, fees and other Obligations under any Loan Document

shall be made in Dollars in same day funds, and no obligation of any Loan Party to make any such payment shall be discharged or satisfied by any payment other than payments made in Dollars in same day funds.

ARTICLE II

THE LOANS

Section 2.01 Commitments.

(a) Loans. Subject to the terms and conditions of this Agreement, from time on and after the Effective Date and until the DIP Termination Date, each Lender, agrees severally, and not jointly or jointly and severally, to make Loans to and for the account of the Borrower and the other Loan Parties as provided herein, in an aggregate principal amount not to exceed such Lender's Commitment (subject to any limitations contained within Interim DIP Order). The Commitment of each Lender shall be reduced by the amount of Loans funded by such Lender hereunder; provided, that, all Commitments shall be terminated on the day prior to the DIP Termination Date. Once repaid, no part of the Loans may be re-borrowed.

(b) [Reserved].

(c) Disbursement of Loans. Pending use in accordance with the Approved Budget (subject to Permitted Variances) and subject to Section 7.25, all DIP Proceeds (including any intra-company transfers of such DIP Proceeds) shall be deposited into one or more bank accounts designated by the Borrower. Any such DIP Proceeds may only be used by the Borrower and the other Loan Parties in accordance with the Approved Budget (subject to Permitted Variances) and otherwise subject to the terms of this Agreement and the DIP Orders.

Section 2.02 Making of the Loans.

(a) The Borrower shall give the Administrative Agent prior written notice, in substantially the form of Exhibit C hereto or such other form approved by the Administrative Agent (a "Notice of Borrowing"), not later than 2:00 p.m. (New York City time) on the date which is two (2) Business Days prior to the date of the proposed borrowing of the Loans (or on the date which is one (1) Business Day prior to the Effective Date for Loans made on the Effective Date and otherwise such shorter period as the Administrative Agent is willing to accommodate from time to time). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loans, (ii) the Borrower's wiring instructions and (iii) the proposed borrowing date. The Administrative Agent and the Lenders may act without liability upon the basis of written or telecopied notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower. The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrower until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) [Reserved].

(c) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Commitment, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

Section 2.03 Repayment of Loans; Evidence of Debt.

(a) The Obligations, including the outstanding principal amount of the Loans, all accrued and unpaid interest thereon, and all other amounts owing to the Agents and/or the Lenders under this Agreement shall be due and payable on the DIP Termination Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to Section 2.03(b) or Section 2.03(c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(b) and the accounts maintained pursuant to Section 2.03(c), the accounts maintained pursuant to Section 2.03(c) shall govern and control.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns in a form furnished by the Collateral Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

Section 2.04 Interest.

(a) Loans. Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made (including as the result of any payment

in kind of any interest and/or fee) through repayment thereof at a rate per annum equal to the Interest Rate.

(b) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall automatically bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(c) Interest Payment. Interest on each Loan shall be payable on each Interest Payment Date and at maturity (whether upon demand, by acceleration or otherwise) provided that, interest at the Post-Default Rate shall be payable on demand. Subject to the immediately following sentence, interest accruing on each Loan (including, if applicable, interest accruing at the Post-Default Rate) shall automatically be paid-in-kind on the applicable date due pursuant to the first sentence of this Section 2.04(c) by capitalizing such interest and increasing the outstanding principal amount of the applicable Loan on such due date by the amount of such accrued but unpaid interest thereon ("PIK Interest"). Notwithstanding anything herein to the contrary, interest on each Loan shall be payable in cash (or, solely in the case of clause (B) below, to the extent expressly provided otherwise in the Ch. 11 Plan, such other forms of consideration under and in accordance with the Ch. 11 Plan) (A) upon any prepayment of that Loan, whether voluntary or mandatory, (B) on the DIP Termination Date and (C) on and after the acceleration of the Loans. Once PIK Interest is capitalized and added to the principal amount of the applicable Loans, such PIK Interest shall thenceforth be considered principal for all purposes hereunder (and shall bear interest in accordance with this Section 2.04 from the date on which such PIK Interest has been so added).

(d) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Termination of Commitment; Prepayment of Loans.

(a) Mandatory Prepayment. The Borrower shall be required to mandatorily prepay the Loans in accordance with Section 7.09 hereof.

(b) Optional Prepayment.

(i) Loans. The Borrower may, at any time and from time to time, by 4:00 p.m. (New York City time) upon at least three (3) Business Days' prior written notice to the Administrative Agent, prepay the principal of the Loans, in whole or in part, subject to simultaneous payment of the Early Termination Fee to the Administrative Agent. Each such prepayment shall be applied to, first, to the Early Termination Fee, second, accrued and unpaid interest on the Loans, third, the outstanding principal of the Loans, and, fourth, on a pro rata basis to the remaining Obligations, in each case, until Paid in Full.

(ii) Termination of Agreement. Subject to payment of the Early Termination Fee, the Borrower may, upon at least three (3) Business Days' prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent the

Obligations, in full in cash; provided, that, such notice may provide that such termination is conditioned upon the consummation of a transaction, in which case, such notice may be revoked or extended by the Borrower if any such transaction is not consummated prior to the date of termination of this Agreement in such notice. If the Borrower has sent a notice of termination pursuant to this Section 2.05(b)(ii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrower shall be obligated to repay the Obligations, in full in cash, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice (except that such termination may be conditioned on the consummation of a transaction).

(c) [Reserved].

(d) Application of Payments. Each Mandatory Prepayment made pursuant to Section 7.09 shall be applied to the Loans, until Paid in Full. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), each Mandatory Prepayment made pursuant to Section 7.09 shall be applied in the manner set forth in Section 4.03(b).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (i) prior written notice, by 3:00 p.m. (New York City time) on the date of such prepayment to the Administrative Agent specifying the amount of such prepayment, (ii) the Early Termination Fee, and (iii) accrued interest on the principal amount being prepaid to the date of prepayment.

Section 2.06 [Reserved].

Section 2.07 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder shall be made free and clear of and without deduction for any Taxes unless such deduction is required by applicable law; provided that if any Loan Party or any other applicable withholding agent is required by applicable law to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. Lender agrees to take any reasonable action in order to avoid incurrence of Indemnified Taxes so long as Lender (in its reasonable discretion) suffers no legal, economic or other disadvantage.

(b) Payment of Other Taxes by the Borrower. In addition, and without duplication of any amounts payable pursuant to Section 2.07(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. Without duplication of any amounts payable pursuant to Section 2.07(a) or (b), the Borrower shall indemnify each Secured Party,

within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by such Secured Party and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent (at the direction of the Required Lenders).

(e) Status of Secured Parties.

(i) Any Secured Party that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower, at the time or times and in the manner prescribed by applicable law and such other time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, each Secured Party shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Secured Party is subject to backup withholding or information reporting requirements. The foregoing documentation shall include, as applicable and without limitation, Internal Revenue Service Form W-9 or appropriate Form W-8 (including all required attachments thereto). Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.07(ii)(A), (ii)(B) and (ii)(C) below) shall not be required if in the reasonable judgment of the applicable Secured Party. such completion, execution or submission would subject such Secured Party to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Secured Party.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such

number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner; and

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or

1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(D) For the avoidance of doubt, each person that shall become a Lender pursuant to Section 12.07 shall, upon the effectiveness of the related transfer, be required to provide all of the forms and statements required pursuant to this Section 2.07.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(iii) On or prior to the Effective Date, the Administrative Agent shall deliver to the Borrower either (A) a duly completed original of IRS Form W-9 certifying that the Administrative Agent is a U.S. Person or (B) (i) a duly completed original IRS W-8ECI or Form W-8BEN-E with respect to payments received by it as a beneficial owner and (ii) a duly completed original of IRS Form W-8IMY certifying that (A) the Administrative Agent is a U.S. branch of a foreign bank and the Administrative Agent agrees to be treated as a U.S. Person with respect to any payments made to it under any Loan Document or (B) it is a qualified intermediary that assumes primary withholding responsibility under Chapters 3 and 4 and primary Form 1099 reporting and backup withholding responsibility for payments to such account. The Administrative Agent agrees that if such IRS Form W-9, W-8ECI, W-8BEN-E or W-8IMY previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or promptly notify the Borrower in writing of its legal inability to do so.

(f) Defined Terms. For purposes of this Section 2.07, the term "applicable law" includes FATCA.

ARTICLE III

[RESERVED]

ARTICLE IV
APPLICATION OF PAYMENTS

Section 4.01 Payments and Computations . (a) The Borrower will make each payment under this Agreement not later than 12:00 noon (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Accounts. All payments received by the Administrative Agent after 12:00 noon (New York City time) on any Business Day shall for all purposes be deemed to have been paid on the next succeeding Business Day. All payments shall be made by the Borrower without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders. After receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. Except as otherwise provided herein, whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) [Reserved].

Section 4.02 Sharing of Payments. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including any payment of an amendment, consent or waiver fee to consenting Lenders pursuant to an effective amendment, consent or waiver with respect to this Agreement), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any Lender so purchasing a participation from

another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 4.03 Apportionment of Payments.

(a) All payments of principal and interest in respect of outstanding Loans and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent (at the direction of the Required Lenders) or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until Paid in Full; (ii) second, ratably to pay the Obligations in respect of any fees (including the Early Termination Fee, if any), expense reimbursements, indemnities and other amounts then due and payable to the Lenders until Paid in Full; (iii) third, ratably to pay interest then due and payable in respect of the Loans until Paid in Full; (iv) fourth, ratably to pay principal of the Loans until Paid in Full; (v) fifth, ratably to pay all other Obligations then due and payable to the Lenders until Paid in Full; and (vi) sixth, to Borrower or such other Person entitled thereto under applicable law (as determined by the Agents at the direction of the Required Lenders or as directed by a court of competent jurisdiction).

(c) [Reserved].

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 4.03 shall control and govern.

Section 4.04 [Reserved].

Section 4.05 No Discharge; Survival of Claims. Until the Loans and all other Obligations are Paid in Full, each of the Loan Parties agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Loan Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the DIP Credit Facility Super-Priority Claims and the Liens granted to the Collateral Agent pursuant to the DIP Orders and described in Section 4.09 shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case, and such claims and Liens shall be Paid in Full by any such plan in each case, unless otherwise agreed by the Administrative Agent

(at the direction of the Required Lenders), including with respect to the assumption of the underlying Obligations by any purchaser of the Debtors' assets.

Section 4.06 Super Priority Nature of Obligations and Lenders' Liens. Subject and subordinate in all respects to the Carve Out, the priority of the Secured Parties' Liens on the Collateral owned by the Loan Parties shall be set forth in the DIP Orders.

(a) All Obligations shall constitute DIP Credit Facility Super-Priority Claims.

(b) Upon entry of the Interim DIP Order and occurrence of the Effective Date, the Liens granted to the Collateral Agent for the benefit of the Lenders on the Collateral shall be valid and automatically perfected and with the priority as set forth in the DIP Orders.

(c) Subject and subordinate in all respects to the Carve Out, except as set forth herein or the DIP Orders, the Debtors shall not seek approval of any other claim having a priority superior or *pari passu* to that granted to the Collateral Agent and Lenders by the DIP Orders while any Obligations remain outstanding.

Section 4.07 Release. Each of the Borrower and its Subsidiaries hereby acknowledges effective upon entry of the Final DIP Order, and subject to the terms of the DIP Orders, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, that each of the Loan Parties and any of their Subsidiaries have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of any Loan Party's or any Subsidiaries' liability to repay the Administrative Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Administrative Agent or any Lender in their respective capacities as such. Upon entry of the Final DIP Order, the Loan Parties, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby fully, finally and forever release and discharge the Administrative Agent and the Lenders in their respective capacities as such and all of the Administrative Agent's and the Lenders' respective officers, directors, servants, agents, advisors, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim DIP Order, whether in law, equity or otherwise (including, without limitation, any so-called "lender liability" or equitable subordination or recharacterization claims or defenses and those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional costs, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to this Agreement, the DIP Orders and the transactions (including, for avoidance of doubt, the Transactions) contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing. Notwithstanding anything herein to the contrary, each Loan Party shall not have any obligation to indemnify or hold harmless any Administrative Agent or any Lender hereunder with respect to liabilities to the extent they result from gross

negligence or willful misconduct of such Administrative Agent or Lender, as applicable, as finally determined by a court of competent jurisdiction; *provided, however*, that nothing in this Section 4.07 shall in any way limit or release the commitments or obligations of the Lenders under the DIP Facility.

Section 4.08 Waiver of Certain Rights.

(a) Subject and subordinate in all respects to the Carve Out, on and after the Effective Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Borrower and the other Loan Parties hereby irrevocably waive any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations.

(b) Upon entry of the Final DIP Order, in no event shall the Agents, the Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral or the Prepetition Secured Collateral, as applicable, and all proceeds thereof shall be received and applied pursuant to the DIP Orders, the Loan Documents and the Prepetition Debt Documents, as applicable, notwithstanding any other agreement or provision to the contrary. It is the intention of the parties that if the Collateral Agent shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, the provisions of this Agreement and/or the other Loan Documents, together with the DIP Orders, all financing statements, if any, and other public financing relating to Liens filed or recorded by the Agents against the Loan Parties and, with respect to all Loan Parties, the DIP Orders and any other order entered by the Bankruptcy Court to secure the Obligations, would be sufficient to create a perfected first priority Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the Collateral.[3]

(c) Upon entry of the Final DIP Order, the Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 105(a) or 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Administrative Agent, the Lenders or the Prepetition Secured Parties upon the Collateral or the Prepetition Secured Collateral, and (ii) the Agents, the Lenders and the Prepetition Secured Parties, shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Agents, the Lenders and the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Secured Collateral or Collateral.

[3] NTD: there is no intention of financing statements, additional security agreements etc. but we should still have the option of doing so (i.e. in the case of a challenge to validity/enforceability of Liens) which shouldn't be controversial.

Section 4.09 Grant of Security; Security for Obligations; Loan Parties Remain Liable.

(a) Pursuant to the DIP Orders, as collateral security for the payment, performance and observance of all of the Obligations, each Grantor hereby pledges and grants to Collateral Agent for the benefit of the Secured Parties a security interest in all assets and properties of each of the Grantors and their bankruptcy estates, whether tangible or intangible, real, personal or mixed, wherever located, whether now owned or consigned by or to, or leased from or to, or hereafter acquired by, or arising in favor of the Grantors (including under any trade names, styles, or derivations thereof), whether prior to or after the Petition Date, including, without limitation, all of the Grantors' rights, titles, and interests in (a) all Prepetition Collateral and (b) subject to, and upon entry of the Final DIP Order, the proceeds of any claims and causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions," and such proceeds, the "Avoidance Action Proceeds"); provided, that in no event shall the Liens on the Collateral securing the Obligations extend to the Avoidance Actions themselves (collectively, the "Collateral"); provided, further, that the Collateral shall exclude Excluded Property, but shall include any and all proceeds and products of such Excluded Property, unless such proceeds and products otherwise separately constitute Excluded Property. The foregoing "all assets" liens on the Collateral shall include, but not be limited to, such Grantor's right, title and interest in, to and under the following property, in each case whether tangible or intangible, wherever located, and whether now owned by such Grantor or hereafter acquired and whether now existing or hereafter coming into existence:

(i) all Accounts, Receivables and Receivables Records;

(ii) all As-Extracted Collateral;

(iii) all Chattel Paper;

(iv) all Deposit Accounts;

(v) all Documents and Contracts;

(vi) all Equipment;

(vii) all Fixtures;

(viii) all General Intangibles, including any and all claims for damages by way of past, present and future infringement of any Intellectual Property, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of Intellectual Property;

(ix) all Goods not covered by the other clauses of this Section 4;

(x) the Pledged Shares;

(xi) all Insurance;

(xii) all Intellectual Property;

(xiii) all Inventory;

(xiv) all Investment Property, including all Securities, all Securities Accounts and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts;

(xv) all Letter-of-Credit Rights;

(xvi) all Money, as defined in Section 1-201(24) of the NYUCC;

(xvii) all commercial tort claims, as defined in Section 9-102(a)(13) of the NYUCC, including those arising out of the events described on Annex 6;

(xviii) all other tangible and intangible personal property whatsoever of such Grantor; and

(xix) all Proceeds of any of the Collateral, all Accessions to and substitutions and replacements for, any of the Collateral, and all offspring, rents, profits and products of any of the Collateral, and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other papers (including all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Grantor or any computer bureau or service company from time to time acting for such Grantor),

provided that Collateral hereunder shall not include: (1) any lease, license, contract, property rights or agreement to which any Grantor is a party (or to any of its rights or interests thereunder) if the grant of such security interest would constitute or result in either (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective by Section 9-406, 9-407, 9-408 or 9-409 of the UCC), provided that the Collateral shall include, and the security interest granted by each Grantor shall attach to, immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, any portion of such lease, license, contract, property rights or agreement not subject to the prohibitions specified in (i) or (ii) above, provided further, that the exclusions referred to in this clause shall not include (1) any Proceeds of any such lease, license, contract, property rights or agreement, (2) 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 (d), respectively, or, if filed, has not been deemed in conformance with 15 U.S.C. § 1051 (a) or (c) and accepted by the USPTO, unless and until a "Statement of Use" or "Amendment to Allege Use" is filed, has been deemed in conformance with 15 U.S.C. § 1051 (a) and (c) or examined and accepted, respectively, by the USPTO, (3) (i) any deposit account used solely for funding payroll or segregating payroll taxes or funding other employee wage or benefit, (ii) any account which is used solely as an escrow account or as a fiduciary or trust account held exclusively for the benefit of an unaffiliated third party and (iii) any credit card facility or payment processor accounts, (4) any assets and the proceeds thereof which are subject to a purchase money security interest or a Capital Lease Obligation which is permitted to be granted or entered into by an Grantor hereunder but only to the extent that an

agreement evidencing such purchase money security interest or Capital Lease Obligations contains a term that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than an Grantor or any of its Subsidiaries or their respective Affiliates) to, the creation, attachment or perfection of the security interest granted with respect to such assets, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law, or (5) Excluded Equity Interests (each of the foregoing, the "Excluded Property").

(b) Each DIP Order shall automatically create and grant fully-perfected Liens with respect to the Collateral without requiring any action by any Loan Party, any Secured Party or any other Person (including, without limitation, the execution and delivery of any Security Documents, the filing or recordation of any UCC-1 financing statements (or equivalent filings in any foreign jurisdictions), mortgages, intellectual property security agreements or any other Security Documents or other filings or notices, the delivery of any physical Collateral to the Lenders or the Agents or the taking of any other perfection actions under applicable law) and none of the foregoing shall be required hereunder, and the Collateral is collateral security for the prompt payment in full when due and owing, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations.

(c) Anything contained herein to the contrary notwithstanding, (a) each Debtor shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by an Agent of any of its rights hereunder or under any other Loan Document shall not release any Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral unless the applicable Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties and obligations, and (c) the Agents shall not have any obligation or liability under any contracts, licenses, and agreements included in the Collateral by reason of this Agreement, nor shall the Agents be obligated to perform any of the obligations or duties of any Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder unless the such Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties and obligations.

(d) In the event of any inconsistency or conflict between this Section 4.09 and the DIP Orders that cannot be resolved, the terms and provisions of the DIP Orders shall control and govern.

ARTICLE V

CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness of the DIP Facility. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied (or waived by the Administrative Agent at the direction of the Required Lenders):

(a) Payment of Fees, Etc. The Borrower shall have paid in cash on or before the Effective Date all fees, costs, and expenses then due and payable pursuant to this Agreement (including under Section 12.04) and the Agent Fee Letter (or shall have delivered evidence that such fees, costs and expenses will be caused to be paid substantially concurrently with the funding of the Loans on the Effective Date).

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct in all material respects on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects on and as of such earlier date), and any representation and warranty that is qualified by references to materiality or Material Adverse Effect or similar term or qualification, shall be true and correct in all respects and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Absence of Legal Impediment. None of the Loan Parties shall be subject to any order, decree or injunction of a court or agency of competent jurisdiction which enjoins or prohibits the consummation of the Transactions.

(d) Delivery of Documents. The Agents shall have received on or before the Effective Date the following, each in form and substance satisfactory to the Agents and Lenders and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) the results of searches for any effective UCC financing statements filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens);

(ii) a certificate of an Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party from its jurisdiction of organization, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, including, without limitation, in the case of the Borrower and (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in

the case of the Borrower, including, without limitation, any Notice of Borrowing, and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such Officers;

(iii) a certificate of the chief financial officer or general counsel (or other financial or legal officer performing similar functions) of the Borrower as to the matters set forth in Section 5.01(b);

(iv) a certificate of the appropriate official(s) of the jurisdiction of organization of each Loan Party certifying as of a recent date not more than thirty (30) days prior to the Effective Date as to the good standing of such Loan Party in such jurisdiction (in each case, to the extent such concept is applicable in the applicable jurisdiction); and

(v) duly executed copies of (1) this Agreement by each Loan Party, each Lender and each Agents, (2) the Global Intercompany Note and (3) the RSA;

(e) KYC; AML. The Administrative Agent and the Lenders shall have received from the Borrower and each of the Loan Parties, at least three Business Days prior to the Effective Date, to the extent requested in writing at least eight (8) Business Days prior to the Effective Date, (a) all documentation and other information requested by the Administrative Agent or any Lender that is required by regulatory authorities under applicable "know your customer" and Anti-Money Laundering Laws, including the USA Patriot Act and (b) if the Borrower qualifies as a "legal entity customer" under the beneficial ownership regulations, the Administrative Agent and the Lenders shall have received from the Borrower, at least one (1) Business Day prior to the Effective Date, a beneficial ownership certification in relation to the Borrower;

(f) [Reserved].

(g) Approvals. Other than as a result of or in connection with the Chapter 11 Cases, all governmental and third party consents and approvals reasonably necessary to be obtained by the Borrower and its Subsidiaries in connection with the DIP Facility, if any, shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to the Administrative Agent) or permitted pursuant to the DIP Orders, as applicable, and shall remain in effect.

(h) Initial Budget. The Administrative Agent and the Lenders shall have received the Initial Budget in form and substance satisfactory to the Administrative Agent at the direction of Required Lenders.

(i) Security Interests. The Administrative Agent, for the benefit of the Lenders, shall have a valid and perfected Lien on and security interest in the Collateral of the Borrower and the other Loan Parties on the basis and with the priority set forth in the DIP Order.

(j) Litigation. Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed in writing to the Administrative Agent prior to the Effective Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or Governmental

Authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to affect materially adversely the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby.

(k) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order within five (5) Business Days following the Petition Date, which Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent (at the direction of the Required Lenders).

Section 5.02 Conditions Precedent to Initial Funding. The Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents (other than Section 5.03 hereunder), the obligation of the Lenders to make the initial funding of Loans hereunder shall be further subject to the satisfaction of each of the following conditions immediately prior to or contemporaneously with such Loans, unless waived in writing by the Administrative Agent (at the direction of the Required Lenders) (the date of such occurrence, the "Initial DIP Funding Date"):

(a) a Notice of Borrowing in accordance with Section 2.02(a), which shall be in accordance with the Approved Budget;[4]

(b) at the time of the making and immediately after giving effect to such Loans, the representations and warranties set forth in Article VI and in each of the other Loan Documents are true and correct in all material respects (except, in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or period, as the case may be) and any representation and warranty that is qualified by references to materiality or Material Adverse Effect or similar term or qualification, shall be true and correct in all respects;

(c) at the time of the making and immediately after giving effect to such Loans, no Default or Event of Default shall then have occurred and be continuing;

(d) the making of such Loans shall not be enjoined, temporarily, preliminary or permanently;

(e) the making of such Loans shall be authorized pursuant to the Interim DIP Order;

(f) the Interim DIP Order shall have been entered by the Bankruptcy Court on the Initial DIP Funding Date or on a date that is no more than two (2) Business Days prior to the Initial DIP Funding Date; and

(g) since the Petition Date, no Material Adverse Effect shall have occurred.

[4] NTD: Rep bringdown and EOD at time of borrowing is customary.

Section 5.03 Conditions Precedent to Second Funding. The Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, the obligation of the Lenders to make a second funding of Loans hereunder shall be further subject to the satisfaction of each of the following conditions immediately prior to or contemporaneously with such Loans, unless waived in writing by the Administrative Agent (at the direction of the Required Lenders) (the date of such occurrence, the "Second DIP Funding Date"):

(a) a Notice of Borrowing in accordance with Section 2.02(a), which shall be in accordance with the Approved Budget;

(b) the time of the making and immediately after giving effect to such Loans , the representations and warranties set forth in Article VI and in each of the other Loan Documents are true and correct in all material respects (except, in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or period, as the case may be) and any representation and warranty that is qualified by references to materiality or Material Adverse Effect or similar term or qualification, shall be true and correct in all respects;

(c) at the time of the making and immediately after giving effect to such Loans, no Default or Event of Default shall then have occurred and be continuing;

(d) the making of such Loans shall not be enjoined, temporarily, preliminary or permanently;

(e) the making of such Loans shall be authorized pursuant to the Final DIP Order;

(f) the Final DIP Order shall have been entered by the Bankruptcy Court on the Second DIP Funding Date or on a date that is no more than two (2) Business Days prior to the Second DIP Funding Date;

(g) the Final DIP Order shall have been entered by the Bankruptcy Court on or prior to the date that is two (2) Business Days prior the Second DIP Funding Date, and

(h) since the Petition Date, no Material Adverse Effect shall have occurred.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organizational Powers. Parent, the Borrower and each of its Subsidiaries (other than Appgate Germany GmbH which is in the process of being wound down) is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, and has all requisite power and authority to carry on its business as now conducted. Parent, the

Borrower and each of its Subsidiaries (other than Appgate Germany GmbH which is in the process of being wound down) is duly authorized, qualified and licensed to do business as a foreign company and is in good standing in all jurisdictions in which the character of the properties and assets now owned or leased by it or the nature of the business transacted by it requires it to be so licensed or qualified, except where the lack of such qualification could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Authorization; Enforceability. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, the execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate action. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, each Loan Document has been duly executed and delivered by each Loan Party thereto and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar Laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

(c) Governmental Approvals; No Conflicts. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, the execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation in any material respect or the certificate of incorporation or bylaws or other applicable organizational documents of any Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument, including for the avoidance of doubt, the Prepetition Debt Documents, binding upon any Loan Party or its assets, or give rise to a right thereunder to require any payment to be made by any such Person, where in each case such default would reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party, other than Permitted Liens.

(d) Capitalization. Parent, the Borrower and each of its Subsidiaries has good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its material properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Permitted Liens. As of the Effective Date, neither Parent nor the Borrower have any Subsidiaries except for those listed on Schedule III.

(e) Litigation. Except for Known Events and as set forth in Schedule IV, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened in writing against or affecting Parent, the Borrower or any of its Subsidiaries (a) that involve this Agreement, any other Loan Document or the Transactions or (b) that could reasonably be expected to have a Material Adverse Effect.

(f) Financial Information.

(i) Any financial statements furnished to the Administrative Agent pursuant to Section 7.01 have been prepared in accordance with GAAP, consistently applied, subject, in the case of unaudited financial statements, to the absence of footnotes and changes resulting from normal, year-end audit adjustments, and present fairly in all material respects the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(ii) The Borrower has heretofore furnished to Administrative Agent and each Lender the Initial Budget. The Initial Budget and each Proposed Approved Budget delivered thereafter are based on good faith estimates and assumptions and believed by management of each of the Borrower and its Subsidiaries to be reasonable and fair in light of current conditions known to the Borrower and its Subsidiaries at the time delivered.

(g) Compliance with Law, Etc. Neither Parent, the Borrower nor any of its Subsidiaries is in default or violation of any (a) Law or (b) note, bond, mortgage, indenture, contract, agreement, understanding, arrangement, commitment, lease, license, permit, franchise, or other instrument or obligation to which such Person is a party or by which such Person or any of its property or assets are bound or affected that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, nor does Parent, the Borrower or any of its Subsidiaries have actual knowledge that any fact or circumstance exists that, with notice, the passage of time, or both notice and the passage of time, could reasonably be expected to result in such a default or violation.

(h) Taxes, Etc. (i) Except as set forth on Schedule V, Parent, the Borrower and each of its Subsidiaries have filed all material federal, state, and other Tax returns and reports required by Law to have been filed by them and have paid all material Taxes due and owing, except (i) any such Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books or (ii) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(i) Margin Stock. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any Loan hereunder will be used to buy or carry any Margin Stock.

(j) Use of Proceeds. The proceeds of the Loans shall be subject to and used in accordance with the Approved Budget (including Permitted Variances) and subject to the terms and conditions of this Agreement and the DIP Orders (i) to make adequate protection payments as required by the DIP Orders; (ii) to fund the administrative costs and expenses of the Chapter 11 Cases (including professional fees and expenses), (iii) to provide working capital and for other general corporate purposes of the Parent, the Borrower and their Subsidiaries, (iv) to pay obligations arising from or related to the Carve Out, (v) to pay fees and expenses incurred in connection with the transactions contemplated hereby and in the RSA, and (vi) for such other purposes subject to reasonable consent of the Required Lenders.

(k) DIP Orders. As of the date of the DIP Funding Date, the Loan Parties are in compliance in all material respects with the terms and conditions of the DIP Orders. Each of the Interim DIP Order (with respect to the period prior to the entry of the Final DIP Order) or the Final DIP Order (from and after the date the Final DIP Order is entered by the Bankruptcy Court), as applicable, is in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent at the direction of the Required Lenders.

(l) Intellectual Property.

(i) Intellectual Property. Schedule VI sets forth under the name of such Loan Party, a complete and correct list of all Copyright registrations, Patents, Patent applications, Trademark registrations and Trademark applications owned by such Loan Party on the date hereof.

(ii) Parent, the Borrower and each of its Subsidiaries has all material permits, memberships, franchises, contracts and licenses required and all Intellectual Property necessary to enable it to conduct the business in which it is now engaged and the conduct of (and use of such Intellectual Property by Parent, the Borrower or any Subsidiary in) its business as currently conducted, to the Borrower's knowledge, does not infringe upon, misappropriate or otherwise violate the rights of any other Person, except for any such infringements, misappropriations, violations, or ownership, license or entitlement to use issues, that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(iii) No Intellectual Property registered in a jurisdiction outside of the United States of America is material to the business of any Loan Party.

(iv) No Intellectual Property that is material to the business of any Loan Party is owned by any Subsidiary that is not a Loan Party.

(v) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect and other than Permitted Liens, (i) no Person has any right or interest of any kind or nature in or to such Loan Party's Intellectual Property, including any right to sell, license, lease, transfer, distribute, use or otherwise exploit such Intellectual Property or any portion thereof, other than (x) in the ordinary course (including licenses and other grants made in the ordinary course of business) of the respective Loan Party's business, (y) the Secured Parties (to the extent provided in, and subject to the limitations and other terms contained in, the Loan Documents), the 1L Secured Parties (to the extent provided in, and subject to the limitations and other terms contained in, the 1L Convertible Notes Documents), the 2L Secured Parties (to the extent provided in, and subject to the limitations and other terms contained in, the 2L Convertible Notes Documents) and the 3L Secured Parties (to the extent provided in, and subject to the limitations and other terms contained in, the 3L RCF Loan Documents) and (z) such Loan Party and, to the extent not prohibited by this Agreement, any other Loan Party or Subsidiary, and (ii) each Loan Party has good and exclusive title to, and, to the Loan Party's knowledge, the valid and enforceable power and right to use and otherwise exploit, its Intellectual Property as currently used and exploited.

(vi) To each Loan Party's knowledge, no Person is currently violating, misappropriating, infringing upon or breaching, any of the rights of any Loan Party to its Intellectual Property or is breaching any duty or obligation owed to any Loan Party in respect of its Intellectual Property, except where those violations, infringements or breaches, individually or in the aggregate, could not be reasonably expected to result in a Material Adverse Effect. No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by any Loan Party, or to any Loan Party's knowledge, to which any Loan Party is bound, that adversely affects its rights to own or use its Intellectual Property as used in its business as of the Effective Date, except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(vii) As of the Effective Date, no Loan Party has received any written notice that remains outstanding challenging the validity, enforceability, rights to use or register, or ownership of any of its Intellectual Property, except where those challenges, individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect.

(viii) Each Loan Party has at all times complied in all material respects with all applicable laws, as well as its own rules, policies, and procedures, relating to privacy, data protection, and the collection, processing, transfer and use of personal information collected, used, or held for use by any Loan Party.

(m) Investment Company Act. No Loan Party is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(n) Benefit Plans. Neither Parent, the Borrower nor any of its Subsidiaries maintains a plan under the Employee Retirement Income Security Act of 1974. [5]

(o) Chapter 11 Cases. The Chapter 11 Cases were commenced on the Petition Date in accordance with the applicable law and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents and the DIP Orders, and (ii) the hearing for the entry of the Final DIP Order.

(p) Transactions with Affiliates. Except for transactions permitted under Section 7.12 and other than the Permitted Indebtedness and registration rights agreements with its Affiliates, neither Parent, the Borrower nor any of its Subsidiaries is a party to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any of its Affiliates.

(q) AML Laws; Anti-Corruption Laws and Sanctions. Each Loan Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by it and its respective directors, officers, employees and agents with Anti-Corruption Laws, applicable AML Laws and applicable Sanctions. No Loan Party or any of its Subsidiaries or, to the knowledge of any Loan Party or any of its Subsidiaries, any of their respective directors, officers, employees or Affiliates, or to the knowledge of any Loan

[5] NTD: If this rep cannot be made, then relevant plans need to be scheduled (as per our initial draft, consistent with the existing revolver).

Party or any of Subsidiaries or, any agent of such Loan Party or any of its Subsidiaries, or any Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, (i) is a Sanctioned Person or (ii) is in material violation of AML Laws, Anti-Corruption Laws, or Sanctions. The proceeds from the Loans have not been or will not be used, directly or to the knowledge of any Loan Party or any Subsidiary, indirectly, to lend, contribute, provide or have not otherwise been made or will not otherwise be made available in violation of AML Laws, Anti-Corruption Laws, or Sanctions or for the purpose of funding any activity or business in any Sanctioned Country or for the purpose of funding any prohibited activity or business of any Sanctioned Person, absent valid and effective licenses and permits issued by each applicable Governmental Authority or otherwise in accordance with applicable laws, or in any other manner that will result in any violation by the Lender of any Sanctions.

(r) Accuracy of Information. None of the information heretofore or contemporaneously furnished in writing to any Agent or any Lender by or on behalf of Parent, the Borrower or any of its Subsidiaries in connection with any Loan Document or any transaction contemplated hereby, when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make any information, in light of the circumstances under which it is made, not misleading in any material respect as of the time when made or delivered; provided, that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information are as to future events and are not to be viewed as facts, the projected financial information are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower, that no assurance can be given that any particular projected financial information will be realized and that actual results during the period or periods covered by any such projections may significantly differ from the projected results and such differences may be material).

(s) Material Adverse Change. Since the Petition Date, no Material Adverse Effect has occurred or any event which would reasonably be expected to result in a Material Adverse Effect.

(t) Certain Representations as to Collateral:

(i) Pledged Shares. The Initial Pledged Shares constitute 100% of the issued and outstanding Capital Stock of each Issuer beneficially owned directly by such Grantor on the date hereof (other than any Excluded Equity Interests), whether or not registered in the name of such Grantor. Schedule VIII correctly identifies, as at the date hereof, the respective Issuers of the Initial Pledged Shares and (in the case of any corporate Issuer) the respective class and par value thereof, whether such Initial Pledged Shares are certificated and the respective number of such Initial Pledged Shares (and registered owner thereof) represented by each such certificate.

(ii) Promissory Notes, Instruments and Tangible Chattel Paper. Other than the Global Intercompany Note, Schedule IX sets forth a complete and correct list of all Promissory Notes (including any intercompany notes), Instruments and Tangible Chattel Paper held by any Grantor on the date hereof with a value of $100,000 or greater individually or with a value of $250,000 or greater in the aggregate.

(iii) [Reserved].

(iv) Commercial Tort Claims. Schedule XI sets forth a complete and correct list of all Commercial Tort Claims of the Grantors in existence on the date hereof with a value of $100,000 or greater individually or with a value of $250,000 or greater in the aggregate.

(v) Letter-of-Credit Rights. Schedule XII sets forth a complete and correct list of all letters of credit issued in favor of each Grantor, as beneficiary thereunder, on the date hereof with a value of $100,000 or greater individually or with a value of $250,000 or greater in the aggregate.

(vi) Special Collateral. As of the date hereof, none of the Collateral constitutes, or is the Proceeds of, (1) Farm Products, (2) As-Extracted Collateral, (3) Manufactured Homes, (4) timber to be cut, (5) Health-care-insurance receivables, (6) [reserved], (7) aircraft, aircraft engines, satellites, ships or railroad rolling stock or (8) motor vehicles or other goods subject to a certificate of title statute of any jurisdiction.

ARTICLE VII

COVENANTS OF THE LOAN PARTIES AND OTHER COLLATERAL MATTERS

So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party, until the DIP Termination Date, covenants and agrees that:

Section 7.01 Reporting Requirements.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) The Borrower shall prepare and deliver, or cause to be prepared and delivered, to the Administrative Agent (for distribution to the Lenders) the following information, in each case within 30 days after the end of each monthly period, beginning with the month ending April 30, 2024: (i) unaudited consolidated balance sheets of Parent as at the close of each such monthly period and (ii) the related unaudited consolidated statements of operations and cash flows of Parent for the period from the beginning of the then-current fiscal year to the end of such monthly period.

Section 7.02 [Reserved]

Section 7.03 Budget.

(a) As soon as available and in any event by 5:00 p.m. beginning on the Friday following the Petition Date and every fourth Friday thereafter, the Borrower shall deliver to the Administrative Agent (for distribution to the Lenders) a proposed 13-Week Budget for approval by the Required Lenders (the "Proposed Approved Budget"). As soon as practicable the Required Lenders or Administrative Agent (at the direction of the Required Lenders) shall notify the Borrower in writing whether or not such Proposed Approved Budget has been approved by the Administrative Agent. Upon approval thereof by the Required Lenders or Administrative Agent (at the direction of the Required Lenders), such 13-Week Budget shall become the Approved Budget; provided that (i) if such Proposed Approved Budget is not satisfactory to the Required Lenders in their sole discretion and not approved by the Required Lenders or Administrative Agent (at the direction of the Required Lenders) in writing, the Approved Budget that is then in effect shall remain in place and (ii) subject to the preceding clause (i), the Initial Budget shall be the only Approved Budget;

(b) on each Budget Testing Date, the Borrower shall deliver to the Administrative Agent (i) a variance report certified by the chief financial officer of the Borrower, in form and substance acceptable to the Required Lenders in their sole discretion, setting forth (x) each of the actual cash receipts and disbursements for the immediately preceding Budget Testing Period, (y) the aggregate Liquidity as of such Budget Testing Date and (z) the variance in dollar amounts of the actual cash receipts and disbursements for the immediately preceding Budget Testing Period from those reflected for the corresponding period in the Approved Budget and including explanations for all material variances (including whether such variance is permanent in nature or timing related) and (ii) an analysis, certified by the chief financial officer of the Borrower, demonstrating that a Budget Event shall not have occurred for such Budget Testing Period (if applicable); provided that, strictly for purposes of testing pursuant to this Section 7.03(b) to the extent that any Approved Budget does not provide for a Budget Testing Period that is four weeks in length, the budget in effect immediately prior to such Approved Budget may be used to supplement such Approved Budget until such time that such Approved Budget provides for a Budget Testing Period that is four weeks in length; and

(c) notwithstanding the foregoing, upon sufficiently detailed request by the Borrower, the Required Lenders or Administrative Agent (at the direction of the Required Lenders) may, in their or its (as applicable) sole discretion, approve a deviation from the then-current Approved Budget by written notice (email being sufficient) to the Borrower (an "Approved Deviation"), and such approval shall for all purposes hereunder amend the relevant Approved Budget to the extent of such Approved Deviation. For the avoidance of doubt, the actual effect, to the extent applicable, of any such Approved Deviation shall be reflected in any subsequent Proposed Approved Budget submitted by the Borrower to the Administrative Agent.

(d) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, on or after the Effective Date, the proceeds received hereunder, all cash of the Parent, the Borrower and their Subsidiaries and proceeds of Collateral shall be used by the Parent, the Borrower and such Subsidiaries solely in accordance with the Approved Budget (subject to Permitted Variance).

Section 7.04 Existence. Each Loan Party shall, (a) at all times preserve and keep in full force and effect its corporate existence and (b) maintain, preserve and protect all property

(including Intellectual Property), licenses, permits, approvals, rights, privileges and franchises necessary to the conduct of its business, except, in the case of this clause (b), where the failure to do so could not likely reasonably be expected to have a Material Adverse Effect.

Section 7.05 Incurrence of Indebtedness and Issuance of Disqualified Stock. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness, and no Loan Party or Subsidiary shall issue any Disqualified Stock; *provided however*, that any Loan Party or Subsidiary may incur Permitted Indebtedness or issue Permitted Disqualified Stock.

Section 7.06 [Reserved].

Section 7.07 Limitation on Investments. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, make any Restricted Investment.

Section 7.08 Liens. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur or assume any Lien of any kind on any asset now owned or hereafter acquired by such Loan Party or Subsidiary; *provided* that any Loan Party or Subsidiary may incur or assume any Permitted Liens.

Section 7.09 Asset Sales; Insurance/Condemnation.

(a) Each Loan Party will not, and will not permit any of its Subsidiaries to, Dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), including any Capital Stock owned by it, except Dispositions (i) of property with a fair market value of less than $100,000 in the aggregate during the term of this Agreement, (ii) of inventory in the ordinary course of business, (iii) of non-exclusive licenses and similar arrangements for the use of the property of the Borrower or any Subsidiary in the ordinary course of business, (iv) of worn-out, obsolete or damaged inventory or equipment, (v) of inventory subject to write-off on the Borrower's financial statements, (vi) for fair market value, *provided* that no Default or Event of Default exists or would result therefrom, and *provided, further*, that if the Disposition (or series of related Dispositions) is of property with a fair market value in excess of $100,000, then the party making the Disposition (or series of related Dispositions) must receive all of the consideration therefor in the form of cash or Cash Equivalents, and (vii) constituting Permitted Investments; *provided* that (1) the Capital Stock of a direct, Wholly-Owned Subsidiary of the Borrower shall not be Disposed of to another Subsidiary of the Borrower unless such receiving Subsidiary of the Borrower is a direct or indirect Wholly-Owned Subsidiary of the Borrower and the Collateral Agent's, for the benefit of the Secured Parties, rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such Disposition and (2) in the event any Loan Party or any Subsidiary Disposes of any property (other than as set forth in any of the preceding clauses (ii) through (v) or clause (vii) of this Section 7.09(a)) which Disposition (or series of related Dispositions) results in the realization by such Person of Net Cash Proceeds in excess of $100,000 in any fiscal year (the "Asset Sale Proceeds"), such Asset Sale Proceeds shall be deposited and remain in one or more bank accounts of the Loan

Parties (until used as hereinafter provided) and such Asset Sale Proceeds shall be promptly (but in any event within fifteen (15) days of such receipt) used to prepay the outstanding amount of the Loans in accordance with Section 2.05(d) (an "Asset Sale Prepayment"); *provided*, that notwithstanding any other provision herein to the contrary, each Asset Sale Prepayment that would otherwise be required by this Section 7.09(a) is also subject to the provisions of Section 7.09(e).

(b) Not later than the fifteen (15) days following the date of receipt by any Loan Party or any Subsidiary of any Net Insurance/Condemnation Proceeds in excess of $100,000 in any fiscal year ("Excess Net Insurance/Condemnation Proceeds"), the Borrower shall prepay the outstanding amount of the Loans in accordance with Section 2.05(d) in an aggregate amount equal to such Excess Net Insurance/Condemnation Proceeds (an "Insurance/Condemnation Prepayment"); *provided* that each Insurance/Condemnation Prepayment that would otherwise be required by this Section 7.09(b) is also subject to the provisions of Section 7.09(e).

(c) Not later than two (2) Business Days following (i) the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or (ii) the receipt of any cash or Cash Equivalents following an Equity Issuance, the Borrower shall prepay the outstanding amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith (each an "Equity/Debt Prepayment"); *provided* that each Equity/Debt Prepayment that would otherwise be required by this Section 7.09(c) is also subject to the provisions of Section 7.09(e).

(d) Not later than two (2) Business Days following the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith (an "Extraordinary Receipts Prepayment"); *provided* that each Extraordinary Receipts Prepayment that would otherwise be required by this Section 7.09(d) is also subject to the provisions of Section7.09(e).

(e) Notwithstanding any other provision herein to the contrary, in the event the Borrower is obligated to effect any Mandatory Prepayment (each such prepayment, for purposes of this Section 7.09(e), a "Waivable Prepayment"), then, not less than five (5) Business Days (or one Business Day in the case of an Equity/Debt Prepayment) prior to the date (the "Required Prepayment Date") on which the Borrower is required to make such Waivable Prepayment, the Borrower shall notify each Lender of its pro rata share of such Waivable Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option to refuse such amount by giving notice to the Borrower of its election to do so at least one Business Day before the Required Prepayment Date (it being understood that any Lender that does not so notify the Borrower of its election to exercise such option shall be deemed to have elected, as of the Required Prepayment Date, not to exercise such option).

Section 7.10 Limitation on Restricted Payments. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, without the prior written consent of the Required Lenders, (a) declare or pay any dividend or make any payment, distribution or return of capital (whether in cash, securities or other property) with respect to any Capital Stock of any Loan Party or any Subsidiary, including any sinking fund or similar deposit, on account of

the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Capital Stock, or on account of any return of capital to the holders of any such Capital Stock, or (b) purchase, redeem, defease, otherwise acquire or retire for value, or make any payment with respect to, any Subordinated Indebtedness or Capital Stock of any Loan Party or Subsidiary held by Persons (such payments as described in parts (a) and (b) hereof, "Restricted Payments"); provided that (i) Subsidiaries of the Borrower may declare and pay dividends or make other distributions ratably with respect to their Capital Stock and (ii) the Borrower may declare and pay dividends or other distributions in an amount not to exceed the amount necessary to cover the unfunded Operating Expenses of Parent in accordance with the Approved Budget; provided that any Restricted Payments referenced in the preceding clauses (i) and (ii) may only be made if in compliance with the Approved Budget and the DIP Orders.

Section 7.11 Intellectual Property. Each Loan Party will not, and will not permit any of its Subsidiaries to, permit any (i) Material Intellectual Property of any Loan Party as of or after the date hereof (by way of Disposition, Investment, Restricted Payment or otherwise) to be owned by any Person other than a Loan Party or (ii) Material Intellectual Property of any Subsidiary that is not a Guarantor as of or after the date hereof (by way of Disposition, Investment, Restricted Payment or otherwise) to be owned by any Person other than a Loan Party, except that any Loan Party or Subsidiary shall be permitted to license and sub-license Intellectual Property on a non-exclusive basis in the ordinary course of business. For the avoidance of doubt, this Section 7.11 shall not prohibit the sale or issuance of any Capital Stock of the Borrower that is permitted under this Agreement.

Section 7.12 Limitations on Transactions with Affiliates. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Loan Party or Subsidiary, except for (a) transactions that are in the ordinary course of business, upon commercially reasonable terms that are no less favorable to the applicable Loan Party or Subsidiary than would be obtained at the time in a comparable, arm's length transaction with a non-affiliated Person, (b) transactions between or among the Loan Parties and their respective Subsidiaries and that are not otherwise prohibited by this Agreement, (c) licenses and sublicenses in the ordinary course of business, (d) any Restricted Payment to the extent permitted by Section 7.10, (e) reasonable and customary director, officer and employee compensation, including bonuses, and other benefits, including retirement, health, stock option, other equity and other benefit plans and indemnification arrangements and any issuance of securities, or other payments, awards or grants in cash, securities or otherwise in connection therewith, in each case, in accordance with the Approved Budget, and (f) the existence of, and the performance of obligations of any Loan Party or any of its Subsidiaries under the terms of any agreement to which such Loan Party or any of its Subsidiaries is a party as of or on the date hereof, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; provided, however, that any future amendment, modification, supplement, extension or renewal entered into after the date hereof shall be permitted solely to the extent that its terms are not more disadvantageous in any material respect to the Lenders than the terms of the agreements in effect on the date hereof.

Section 7.13 Additional Guarantors. If, following the Effective Date, any U.S. Subsidiary of Parent shall become a Guarantor (as defined in the 1L Convertible NIA or 2L Convertible NIA) with respect to the 1L Convertible Notes Obligations or 2L Convertible Notes

Obligations, respectively, the Borrower shall simultaneously therewith, (i) notify the Administrative Agent hereof, (ii) cause such Subsidiary to become a Guarantor and a Grantor by executing a joinder to this Agreement in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders and (iii) cause to be delivered to the Administrative Agent all such documents (including legal opinions and supplements to any other applicable Loan Document) as the Administrative Agent (or the Administrative Agent (at the direction of the Required Lenders)) shall reasonably request to evidence compliance with this Section 7.13. Furthermore, to the extent not perfected by virtue of the DIP Orders or if any Person challenges the validity or enforceability of the Liens granted pursuant to the DIP Orders, such Subsidiary shall, upon request of the Administrative Agent, take all actions as are reasonably necessary or desirable to cause all of its property and assets, other than Excluded Property, to become subject to a first priority perfected security interest in favor of the Collateral Agent for the benefit of the Secured Parties (subject to any Permitted Liens).

Section 7.14 Payment of Taxes and Claims; Maintenance of Properties.

(a) To the extent required or permitted by any order of the Bankruptcy Court and contemplated by the Approved Budget, each Loan Party will, and will cause each Subsidiary to, pay, discharge or otherwise satisfy all material taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for material sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; *provided* that no such tax or claim need be paid if (i) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP, shall have been made therefor or (ii) the failure to pay such tax or claim either individually or in the aggregate, will not reasonably be expected to have a Material Adverse Effect, or (iii) non-payment thereof is permitted under the Bankruptcy Code or order of the Bankruptcy Court.

(b) Each Loan Party will, and will cause each Subsidiary to, maintain or cause to be maintained in good repair, working order and condition (ordinary wear and tear excepted) all properties used or useful in the business of the Loan Parties and their respective Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof except to the extent that, in the reasonable judgement of the Borrower, any such property is no longer necessary or useful for the proper conduct of the business of the Loan Parties and their respective Subsidiaries.

(c) Each Loan Party will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

Section 7.15 Notices; Information.

(a) Each Loan Party shall deliver to each Lender promptly, but in any event within three (3) Business Days after, any officer thereof obtains knowledge (i) of any condition or event that constitutes a Default or an Event of Default under any Loan Document; (ii) [reserved] or (iii) of the occurrence of any event or change that could reasonably be expected to cause or evidence, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(b) Each Loan Party shall deliver to each Lender promptly upon any officer thereof obtaining knowledge of any Adverse Proceeding not previously disclosed in writing to the Lenders, if adversely determined could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, notice thereof together with such other information as may be reasonably available to any Loan Party (including delivery of copies of notices received by them) to enable the Lenders and their counsel to evaluate such matters.

(c) Each Loan Party shall deliver to each Lender and the Collateral Agent within three (3) Business Days (i) any default notice received with respect to any Material Indebtedness and (ii) notice of any event of default (or analogous term) under any Material Indebtedness of which any officer thereof has knowledge.

Section 7.16 Compliance with Laws and Contractual Obligations.

(a) Each Loan Party shall, and shall cause each of its Subsidiaries and each of its and their respective directors, officers and employees to, comply (i) with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (excluding, solely for purposes of this Section 7.16(a), Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions) and (ii) Contractual Obligations, in the case of each of (i) and (ii) above, only to the extent any noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Each Loan Party shall, and shall cause each of its Subsidiaries and each of its and their respective directors, officers and employees to, comply in all material respects with the requirements of all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions. Each Loan Party shall continue to maintain in effect and enforce, and shall procure that each of its Subsidiaries continues to maintain in effect and enforce, policies and procedures designed to promote and achieve compliance by them and their respective directors, officers and employees with applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

Section 7.17 Books and Records; Inspections. The Borrower and each Guarantor will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities, and with respect to Parent, all such entries shall be in conformity in all material

respects with GAAP. Each Loan Party will, and will cause each of its Subsidiaries to, permit any authorized agents designated by any Lender (including the right to appoint third party agents), for so long as no Event of Default has occurred and is continuing, and not more than once per fiscal quarter, to visit and inspect any of the properties of the Borrower, Guarantors or any Subsidiary, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

Section 7.18 [Reserved].

Section 7.19 Limitations on Restrictive Agreements. Each Loan Party will not, nor will any Loan Party permit any Subsidiary to, directly or indirectly (i) enter into or assume any agreement, document, license, instrument or other arrangement (other than the Loan Documents) prohibiting (or having the effect of prohibiting) the creation or assumption of any Lien on Collateral or (ii) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Loan Documents) on the ability of any Subsidiary to: (A) pay or make Restricted Payments to any Loan Party or any Subsidiary; (B) pay any Indebtedness owed to the any Loan Party or any Subsidiary; (C) make loans or advances to any Loan Party or any Subsidiary; (D) transfer any of its property or assets to any Loan Party or any Subsidiary or (E) limit the ability of any Person required to Guarantee the Obligations to so Guarantee; *provided* that the foregoing clause (ii) shall not apply to (1) restrictions or conditions imposed by law, by this Agreement or any other Loan Document, (2) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness, (3) any agreement in connection with an asset sale permitted by Section 7.09 pending consummation of such asset sale solely to the extent it relates only to property being sold in such permitted asset sale, and (4) the DIP Orders, the Approved Budget or the "first day" orders (solely to the extent permitted under the DIP Orders).

Section 7.20 [Reserved].

Section 7.21 Post-Closing Requirements. The Borrower or the applicable Guarantor will deliver to the Administrative Agent, on or before the applicable date set forth in Schedule XIII, each of the items set forth in such schedule.

Section 7.22 Further Assurances. Subject to the limitations set forth herein, each Loan Party shall execute and deliver such further instruments and do such further acts as may be reasonably necessary, desirable or proper, or that the Collateral Agent or the Administrative Agent may reasonably request, to carry out more effectively the provisions of this Agreement or any other Loan Document.

Section 7.23 Lender Meetings. Unless cancelled by the Administrative Agent at the direction of the Required Lenders, on each Friday (or such other day as mutually agreed between the Administrative Agent and the Borrower) (or in the event that such day is not a Business Day, then on the Business Day immediately following) during the Chapter 11 Cases, the Debtors' senior management and professionals shall host a telephonic meeting for the Lenders and

their professionals at which the Debtors' senior management and professionals shall provide an update to the Lenders and their professionals (and shall make themselves available for questions) with respect to the financial and operating performance of the Debtors, the latest Approved Budget.

Section 7.24 [Reserved].

Section 7.25 Use of Proceeds. Each Loan Party shall not, and shall cause each of its Subsidiaries not to, at any time, use proceeds of the Loans for the purposes other than as set forth in Section 6.01(j). Without in any way limiting the foregoing, and otherwise in accordance with the DIP Orders, no Collateral, DIP Proceeds or any portion of the Carve Out may be used directly or indirectly by any of the Debtors, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor chapter 7 case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (a) to seek authorization to obtain liens or security interests that are senior to or *pari passu* with the Liens or the Liens in existence on the Petition Date securing the Prepetition Obligations (the "Prepetition Liens") (except to the extent expressly set forth herein); (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Agents, the Lenders or Prepetition Secured Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, Affiliates, assigns, or successors of each of the foregoing (all in their capacities as such), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Credit Facility Super-Priority Claims, the Liens, the Loan Documents, the Prepetition Liens, the Prepetition Debt Documents, or the Prepetition Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations or the Prepetition Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the Agents or the Lenders hereunder or under any of the Loan Documents; or (vi) objecting to, contesting, or interfering with, in any way, the Agents' and the Lenders' enforcement or realization upon any of the Collateral once an Event of Default has occurred; (B) the Prepetition Secured Parties under any of the Prepetition Debt Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Agents' or the Lenders' assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the applicable Loan Documents and the DIP Orders); (c) to challenge the application of any payments or collections received by the Agents or Lenders to the obligations of Loan Parties as provided for herein, or (d) propose or support a plan of reorganization or sale of all or substantially all of the assets of the Loan Parties that is inconsistent with the terms of the RSA; provided, that no more than $25,000 of the proceeds of the DIP Facility, the Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by a Committee, if any, to investigate the foregoing matters within the Challenge Period.

Section 7.26 Consolidation Etc.. Each Loan Party shall not, and shall cause each of its Subsidiaries (other than Appgate Germany GmbH which is in the process of being wound up) not to (i) wind-up, liquidate or dissolve or (ii) consolidate with, merge with or into, to sell, convey, assign, transfer, lease or otherwise Dispose of all or substantially all of its properties and assets, in one transaction or any series of transactions, to another Person.

Section 7.27 Chapter 11 Milestones. Each Loan Party shall ensure that each of the Milestones set forth on Schedule XIV is achieved in accordance with the applicable timing referred to therein (or such later dates as may be approved in writing by the Administrative Agent at the direction of the Required Lenders in their reasonable discretion).

Section 7.28 Bankruptcy Covenants. Notwithstanding anything in the Loan Documents to the contrary, the Debtors shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the DIP Orders in all material respects.

Section 7.29 Chapter 11 Cases. The Loan Parties shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable and in any event not less than two (2) Business Days (or as soon thereafter as is reasonably practicable under the circumstances) prior to filing, all material pleadings, motions and other documents (provided that any of the foregoing relating to this Agreement, the Loans or sale of any assets of the Debtors shall be deemed material) to be filed on behalf of the Debtors with the Bankruptcy Court (including, but not limited to, all draft pleadings to the extent required under the RSA) to counsel to the Lenders and shall consult in good faith with such counsel regarding the form and substance of any such proposed filing. The Loan Parties shall provide copies to the Administrative Agent and the Lenders of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Debtors with the Bankruptcy Court, distributed by or on behalf of the Debtors to any Committee, filed with respect to the Chapter 11 Cases or filed with respect to any Loan Document. In connection with the Chapter 11 Cases, the Debtors shall provide the proper notice for (x) the motions seeking approval of the Loan Documents and the DIP Orders and (y) the hearings for the approval of the DIP Orders.

Section 7.30 Employee Payments. Each Loan Party shall not make any bonus payment to any executive officers or employees of Parent or any of its Subsidiaries unless in accordance with the Approved Budget and as authorized by the Bankruptcy Court.

Section 7.31 Change to DIP Orders. Without the prior written consent of the Administrative Agent (at the direction of the Required Lenders), no Loan Party shall make or permit to be made any change to the Interim DIP Order or the Final DIP Order unless such changes are required by the Bankruptcy Court.

Section 7.32 Superpriority Claims. Each Loan Party shall not seek authorization for, or permit the existence of, any claims other than that of the Lenders entitled to a superpriority under section 364(c)(1) of the Bankruptcy Code that is senior or pari passu with the Lenders' section 364(c)(1) claim, except for the Carve Out.

ARTICLE VIII

[RESERVED]

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01 Events of Default; Exercise of Remedies. Each of the following events after any applicable cure period, if any, shall constitute an event of default (each, an "Event of Default"):

(a) the Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 2 Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation, warranty, certification or other statement made or deemed made by the Borrower, Guarantor or any Subsidiary in any Loan Document or in any certificate at any time given by any Loan Party or any Subsidiary pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made;

(c) failure by the Borrower, or any Guarantor or Subsidiary, as applicable, to comply with its obligations under (i) Section 7.15(a)(i), 7.23, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31 and 7.32, (ii) Sections 7.03, 7.04(a), 7.05, 7.06, 7.08, 7.09, 7.10, 7.11, 7.12, 7.13, 7.15 (other than Section 7.15(a)(i)), 7.19, and 7.21 and such failure in the case of this clause (ii), if capable of being remedied, remains unremedied for a period of two (2) Business Days, (iii) Section 7.07 and such failure, in the case of this clause (iii), remains unremedied for five (5) calendar days after the occurrence thereof and (iv) Sections 7.01, 7.04(b), 7.14, 7.16, 7.17 or 7.22 and such failure, in the case of this clause (iv), remains unremedied for ten (10) calendar days after the occurrence thereof;

(d) failure by any Loan Party or any Subsidiary, as applicable, to comply with any covenants and obligations (other than pursuant to Sections 9.01(a) through (c) hereunder) of any Loan Party or Subsidiary, as applicable, contained in the Loan Documents;

(e) default by any Loan Party or solely with respect to clause (e)(i) hereunder, any Subsidiary, with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any Indebtedness for money borrowed of $500,000 (or the foreign currency equivalent thereof) or more in the aggregate of the Loan Parties, whether such Indebtedness now exists or shall hereafter be created, or any Material Indebtedness, in each case (i) resulting in such Indebtedness becoming or being declared immediately due and payable or would permit the holder thereof to accelerate such Indebtedness prior to its stated maturity or enforce any Liens (in each case, without giving effect to any intercreditor or subordination arrangements), (ii) constituting a failure to pay the principal of or

interest on any such Indebtedness when due and payable at its stated maturity date, upon required repurchase, upon declaration of acceleration or otherwise;

(f) other than the Chapter 11 Cases and the wind down of Appgate Germany GmbH, any Loan Party, or any Significant Subsidiary of Parent shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to such Loan Party or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Loan Party, if any, or Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors;

(g) other than the Chapter 11 Cases, an involuntary case or other proceeding shall be commenced against any Loan Party, if any, or any Significant Subsidiary of Parent seeking liquidation, reorganization or other relief with respect to such Loan Party or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Loan Party or Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive calendar days;

(h) a final judgment or judgments for the payment of $1,000,000 (or its foreign currency equivalent) or more (excluding any amounts covered by insurance) in the aggregate rendered against any Loan Party, if any, which judgment is not discharged, paid, bonded, waived or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Guarantee by any Guarantor, if any, ceases to be in full force and effect or such Guarantee is declared by a court of competent jurisdiction to be null and void and unenforceable or the Guarantee is found by a court of competent jurisdiction to be invalid or such Guarantor denies its liability under its Guarantee;

(j) (A) any of the Security Documents or Section 4.09 of this Agreement shall cease for any reason to be in full force and effect, or the Borrower, a Guarantor or Subsidiary, shall so assert in writing, or (B) the Lien created by any of the Security Documents, or the Lien created hereunder or pursuant to the DIP Orders, shall cease to be, or shall be asserted in writing by any Loan Party or Subsidiary not to be, perfected (to the extent required by this Agreement or the applicable Security Document(s)) and enforceable in accordance with its terms or of the same effect as to perfection and priority purported to be created thereby with respect to any material portion of the Collateral (other than in connection with any termination of such Lien in respect of any Collateral as permitted by this Agreement or the DIP Orders or by any of the Security Documents, or the non-perfection of any Lien to the extent that the Borrower and the Required Lenders reasonably agree that the burden or cost of perfecting such Lien would be excessive in relation to the practical benefit to the Secured Parties obtained thereby);

(k) any Subordinated Indebtedness permitted hereunder or the guarantee thereof shall cease, for any reason, to be validly subordinated to the Obligations, as provided in the subordination agreement applicable thereto;

(l) (i) there shall occur one or more ERISA Events which individually or in the aggregate results in or would reasonably be expected to result in a Material Adverse Effect or (ii) there exists, with respect to a Plan, any fact or circumstance that reasonably would be expected to result in the imposition of a Lien or security interest pursuant to Section 430(k) of the Code, other than such Liens or security interests as would not be individually or in the aggregate be material

(m) a Change of Control shall have occurred;

(n) the Initial DIP Funding Date shall not have occurred within five (5) Business Days after the Petition Date;

(o) the occurrence and continuance of any of the following in any Chapter 11 Case:

(i) except as otherwise agreed to by the Administrative Agent (acting at the direction of the Required Lenders), filing of a motion seeking approval of a sale pursuant to Section 363 of the Bankruptcy Code or a plan of reorganization or liquidation in any of the Chapter 11 Cases that is inconsistent with the terms of the RSA;

(ii) any of the Loan Parties shall file a pleading seeking to amend, vacate or modify any of the Loan Documents or DIP Orders over the objection of the Administrative Agent or the Administrative Agent at the direction of the Required Lenders;

(iii) entry of an order without the prior written consent of the Administrative Agent (at the direction of Required Lenders) amending, supplementing or otherwise modifying the Loan Documents or DIP Orders;

(iv) reversal, vacatur or stay of the effectiveness of the DIP Orders except to the extent reversed within three (3) Business Days thereafter;

(v) any violation of any material term of the DIP Orders by any Loan Party;

(vi) dismissal of any of the Chapter 11 Cases or conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking such dismissal or conversion of any bankruptcy case;

(vii) the entry of an order by the Bankruptcy Court appointing, or the filing of a motion or application by any Debtor an order seeking the appointment of, in either case, without the prior consent of the Required Lenders, (A) a Chapter 11 trustee under section 1104 of the Bankruptcy Code or (B) an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) or any Debtor shall file a motion or other pleading seeking such appointment;

(viii) failure to satisfy any of the Milestones (after giving effect to any applicable grace period), unless extended or waived by the prior written consent of the Administrative Agent at the direction of the Required Lenders;

(ix) granting of relief from the Automatic Stay by the Bankruptcy Court after notice and hearing in the Chapter 11 Cases to permit enforcement upon any Lien or foreclosure or enforcement on assets of Borrower or any Loan Party in each case with a fair market value in excess of $250,000;

(x) the bringing of a motion or application by any Debtor in any of the Chapter 11 Cases, or the entry of any order by the Bankruptcy Court in any of the Chapter 11 Cases: (A) to obtain additional post-petition financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for Payment in Full of all Obligations under the Loan Documents and (except to the extent provided otherwise in the Ch. 11 Plan) payment in full in cash of all Prepetition Obligations under the Prepetition Debt Documents, in each case immediately upon the consummation of such financing without the prior written consent of the Required Lenders; or (B) except as provided in this Agreement, the DIP Orders or as otherwise consistent with the Approved Budget, to use Cash Collateral of the Agents and the Lenders under section 363(c) of the Bankruptcy Code or any equivalent provision of the relevant applicable law without the prior written consent of the Administrative Agent and the Required Lenders;

(xi) an order shall be entered in any of the Chapter 11 Cases, without the prior written consent of the Administrative Agent at the direction of Required Lenders (i) to permit any administrative expense or any claim (now existing or hereafter arising of any kind or nature whatsoever) to have administrative priority equal or superior to the DIP Credit Facility Super-Priority Claims or (ii) granting or permitted grant of a lien that is equal in priority or senior to the Liens (other than the Carve Out);

(xii) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of an order approving any key employee incentive plan, employee retention plan, or comparable plan not in accordance with the Approved Budget, without the prior written consent of the Required Lenders;

(xiii) (1) the Debtors shall seek, or shall support any other person's motion seeking (in any such case, verbally in any court of competent jurisdiction or by way of any motion or pleading with the Bankruptcy Court, or any other writing to another party in interest by Debtors) to challenge the validity or enforceability of any of the Lien or obligations of the parties under the 1L Convertible Notes Documents, including, but not limited to, seeking to prohibit, limit or restrict the right of the 1L Convertible Notes Agent (on behalf of the 1L Secured Parties) to credit bid for any or all of the Debtors' assets, or (2) the Bankruptcy Court enters an order prohibiting, restricting, precluding, or otherwise impairing the unqualified right of the Agents or the 1L Convertible Notes Agent (or their respective designees), from having the right to or being permitted to "credit bid" any amount of the Obligations or 1L Convertible Notes Obligations, respectively, with respect to the assets of the Debtors;

(xiv) the Debtors shall assert in any pleading filed in any court that the guarantee contained in the Loan Documents is not valid and binding and in full force and effect, for any reason, other than pursuant to the terms hereof;

(xv) payment of (or application by any Debtor for authority to pay) or granting adequate protection with respect to prepetition Indebtedness, other than as expressly provided herein or in the DIP Orders or relief sought in any "first day motions" filed on the Petition Date;

(xvi) expiration or termination of the period provided by section 1121 of the Bankruptcy Code for the exclusive right to file a plan, with respect to a Debtor unless such expiration or termination was sought by the Administrative Agent at the direction of the Required Lenders;

(xvii) the Bankruptcy Court's determination that the Liens or the DIP Credit Facility Super-Priority Claims are not valid, perfected and enforceable in all respects;

(xviii) Permitted Variances under the Approved Budget are exceeded for any period of time without consent of or waiver by the Administrative Agent at the direction of the Required Lenders;

(xix) any Debtor asserting any right of subrogation or contribution against any other Debtor until all Obligations are Paid in Full;

(xx) subject to entry of the Final DIP Order, the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Lender;

(xxi) the commencement of a suit or action against any Lender by (x) the Debtors or (y) any other Person which continues without dismissal for thirty (30) days after service thereof on the Lenders, that in each case asserts or seeks by or on behalf of the Debtors, any Committee or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (i) have the effect of subordinating any or all of the Obligations or Liens of the Lenders under the Loan Documents to any other claim, or (ii) have a material adverse effect on the rights and remedies of the Agents and/or the Lenders under any Loan Document or the collectability of all or any portion of the Obligations;

(xxii) the entry of an order in any bankruptcy case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xxiii) an order shall have been entered by the Bankruptcy Court (except as agreed in any DIP Order) prohibiting, limiting or restricting the right of the Administrative Agent (on behalf of the Lenders) or the 1L Convertible Notes Agent (on behalf of the 1L Secured Parties) to credit bid for any or all of the Debtors' assets;

(xxiv) [reserved];

(xxv) the payment of, or application by any Debtor for authority to pay, any prepetition claim, via a "first day" order or otherwise, other than (i) as consented to by the Required Lenders, (ii) as authorized by the Approved Budget, (iii) permitted under the terms of this Agreement or (iv) as authorized by the Bankruptcy Court or the DIP Orders and otherwise permitted in the Approved Budget;

(xxvi) any event, development, state of facts, change, circumstance, occurrence, condition or effect occurring after the Petition Date that relates to or arises from material litigation and that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect;

(xxvii) any settlement of any material litigation that is not consented to by the Administrative Agent (at the direction of the Required Lenders); and

(xxviii)(i) any breach by any Loan Party of its obligations under the RSA or (ii) the RSA is terminated for any reason (other than any automatic termination in accordance with its terms).

If any Event of Default occurs and is continuing, subject to the terms and conditions of the DIP Orders, the Collateral Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) terminate all use of the Debtors' use of any Cash Collateral, (iii) [reserved], (iv) immediately set-off any and all amounts in accounts maintained by the Debtors with any of the Agents or the Lenders or otherwise enforce any and all rights against the Collateral in the possession of any of the Agents or Lenders, (v) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the Early Termination Fee, with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (vi) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents and DIP Order; provided, however, that the Agents and Lenders shall provide the Borrower and its Subsidiaries with five (5) Business Days' prior written notice (which may be by email) (the "Default Notice Period") , which notice period shall run concurrently with any cure period specified in this Section 9.01, before exercising any enforcement rights or remedies, except that the Administrative Agent may immediately terminate consent to the use of Cash Collateral *provided* that during the Default Notice Period, the Loan Parties shall be permitted to continue to use Cash Collateral and proceeds of Loans solely (x) in the ordinary course of business and in accordance with the Approved Budget and the Loan Documents to fund expenses critically necessary to preserve the value of the Debtors' business and the Collateral, including professional fees of the Debtor Professionals, as reasonable determined by the Loan Parties, and (y) to satisfy the Carve Out in accordance with the DIP Orders. Each Loan Party and each of their respective Subsidiaries shall cooperate fully with the Agents and the Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. Notwithstanding anything herein to the contrary, during the Default Notice Period, each Loan Party and its Subsidiaries shall have the right to challenge, among other things, the existence or occurrence of an Event of Default (and no

other matters) by seeking emergency relief from the Bankruptcy Court. If the Bankruptcy Court finds that an Event of Default has occurred and is continuing, the Lenders' right to enforce the remedies provided for herein and in the DIP Orders shall be subject to satisfaction of the obligations occasioned by the issuance of a Carve Out Trigger Notice; provided, however, that the Loan Parties (in their capacities as Debtors, as applicable) hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the Lenders or the Agents, or, if applicable, the 1L Secured Parties.

provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all outstanding Commitments (if any) shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees (including the Early Termination Fee) and all other amounts due under this Agreement and the other Loan Documents shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

Section 9.02 [Reserved].

ARTICLE X

AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees reasonably necessary

or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation. (a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and neither the Agents nor any of their Related Parties shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any of its Related Parties or

any other trustee, co-agent or other Person (including any Lender). Any such Related Party, trustee, co-agent or other Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their Related Parties shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court or other tribunal of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents). Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by

it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any Agent or any Related Party of the foregoing is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent and such Related Parties for and indemnify such Agent and such Related Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent and such Related Parties), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent and the Related Parties in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent and such Related Parties under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or such Related Party's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive Payment in Full of the Loans and the termination of this Agreement.

Section 10.06 Agents Individually. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent. (a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) 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 held by such 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 (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent

hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) [Reserved].

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnity Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the

Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

(f) Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization or liquidation, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and Liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan

Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Borrower and its Subsidiaries (each, a "Report") prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Borrower and its Subsidiaries and will rely significantly upon the Borrower's and its Subsidiaries' books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 [Reserved].

Section 10.15 [Reserved].

Section 10.16 [Reserved].

Section 10.17 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

Section 10.18 Erroneous Distribution. If all or any part of any payment or other distribution by or on behalf of the Administrative Agent to the Borrower, any Lender, or any other Person is determined by the Administrative Agent, in its sole discretion, to have been made in error as determined by the Administrative Agent (any such distribution, an "Erroneous Distribution"), then such Borrower, Lender, or other Person, respectively, shall forthwith on written demand (accompanied by a reasonably detailed calculation of such Erroneous Distribution) repay to the Administrative Agent the amount of such Erroneous Distribution received by such Person. Any determination by the Administrative Agent, in its sole discretion, that all or a portion of any distribution to the Borrower, any Lender, or any other Person was an Erroneous Distribution shall be conclusive absent manifest error. Each Debtor, Lender, and other potential recipient of an Erroneous Distribution hereunder waives any claim of discharge for value and any other claim of entitlement to, or in respect of, any Erroneous Distribution.

ARTICLE XI

GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrower now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of the Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrower, being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrower to the Secured Parties under any Loan Document, but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving the Borrower. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of Payment in Full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the DIP Termination Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been Paid in Full and the DIP Termination Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of Payment in Full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the DIP Termination Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be Paid in Full and (iii) the DIP Termination Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair

Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the Guaranteed Obligations. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, telecopier or email. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

if to the Borrower or another Loan Party, to it at the following Address:

Appgate Cybersecurity, Inc.
Email: Jeremy.dale@appgate.com

with a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 19922.

Attention: Christopher Marcus, Derek I. Hunter, Maddison Levine and Brian Nakhaimousa
Email: cmarcus@kirkland.com, derek.hunter@kirkland.com, maddison.levine@kirkland.com and brian.nakhaimousa@kirkland.com

if to the Administrative Agent or the Collateral Agent, to it at the following address:

[U.S. Bank Trust Company, National Association]
[_____]
Attention: [_____]
Email: [_____]

with a copy to:

Magnetar Financial LLC
1603 Orrington Avenue, 13th Floor
Evanston, IL 60201
Attention: Chief Legal Officer
Email: [_____]

in each case, with a copy to:

Willkie Farr & Gallagher LLP
600 Travis Street
Houston, TX 77002
Attention: Jennifer Hardy, Esq. and Melainie Mansfield, Esq.
Telephone: (713) 510-1766
Email: jhardy2@willkie.com and mmansfield@willkie.com |

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile or e-mail shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent, each Lender and the Borrower agrees to accept notices, reports and other communications (including, without limitation, the financial information required to be delivered pursuant to Section 7.01 and all budgets and reports required to be delivered pursuant to Section 7.03) to it hereunder by electronic communications (including e-mail and Internet or intranet websites).

(ii) (A) All notices, reports and other communications (including, without limitation, the financial information required to be delivered pursuant to Section 7.01 and all budgets and reports required to be delivered pursuant to Section 7.03) shall be deemed to have been received upon the sending of the foregoing to the applicable e-mail address as described in the foregoing clause (A) or as otherwise provided to the other parties hereto from time to time and (B) all notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor.

(iii) The Loan Parties hereby agree that if either they, any parent company or any Subsidiary of the Loan Parties has publicly traded equity or debt securities in the United States, they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (i) identify in writing, and (ii) to the extent reasonably practicable, clearly and conspicuously mark such notices and other communications that contain only information 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 notices and other communications as "PUBLIC" or publicly filing such notices and other communications with the SEC, then the Agents and the Lenders shall be entitled to treat such notices and other communications as not containing any material non-public information ("MNPI") for purposes of United States federal and state securities laws. The Loan Parties further represent, warrant, acknowledge and agree that the following documents and materials shall be deemed to be "PUBLIC," whether or not so marked, and do not contain any MNPI: (A) the Loan Documents, including the schedules and exhibits attached thereto, and (B) administrative materials of a customary nature prepared by the Loan Parties or any Agent (including, Notices of Borrowing).

Section 12.02 Amendments, Etc.

(a) Subject to the terms of the DIP Orders, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrower, (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that copies of all executed amendments, waivers and consents shall be provided to the Agents promptly after execution; provided, further, however, that no amendment, waiver or consent shall:

(i) increase or reinstate the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

(ii) increase the Total Commitment without the written consent of each Lender;

(iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iv) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(v) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate the Obligations in right of payment to any other Indebtedness, subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, or release any Loan Party, in each case, without the written consent of each Lender; provided, that the Required Lenders may elect to release all or a substantial portion of the Collateral without the requirement to obtain the written consent of each Lender if such release is in connection with (x) an exercise of remedies by the Collateral Agent at the direction of the Required Lenders pursuant to Section 9.01 or (y) any Disposition of all or a substantial portion of the Collateral by one or more of the Loan Parties with the consent of the Required Lenders after the occurrence and during the continuance of an Event of Default so long as such Disposition is conducted in a commercially reasonable manner as if such Disposition were a disposition of Collateral by a secured creditor in accordance with Article 9 of the UCC; or

(vi) amend, modify or waive Section 4.02, Section 4.03, Section 4.09, Section 10.08, Section 10.17 or this Section 12.02 of this Agreement without the written consent of each Lender.

(b) Notwithstanding anything to the contrary in Section 12.02(a):

(i) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent under this Agreement or the other Loan Documents; and

(ii) no consent of any Loan Party shall be required to change any order of priority set forth in Section 2.05(d) and Section 4.03.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Attorneys' Fees. Each Loan Party hereby agrees to pay or reimburse all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of the Agents and (to the extent set forth below) the Lenders, including, without limitation (i) reasonable fees, documented out-of-pocket costs, client charges and expenses of counsel for the Agents, to the extent set forth below (limited to the reasonable and documented fees and expenses of (I) Shipman & Goodwin LLP, counsel for the Agents (II) Willkie Farr & Gallagher LLP, counsel to the Lenders and (III), if reasonably necessary, any regulatory or other special counsel to the Agents and the Lenders taken as whole, and, in the event of any reasonably perceived or actual conflict of interest, one additional counsel of each relevant type to the affected parties), and, any other professional advisors, including M3 Partners, LP, retained by Lenders and (ii) reasonable and documented fees, out-of-pocket costs, client charges and expenses of the Agents and Lenders relating accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, title searches, and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of the DIP Orders, this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to this Agreement or the DIP Orders or the review of any of the agreements, instruments and documents referred to in Section 7.17 or the DIP Orders), (b) any requested amendments, waivers or consents to the DIP Orders, this Agreement or the other Loan Documents whether or not such documents become effective or are given, and (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement, the other Loan Documents or the DIP Orders, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the DIP Orders, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement, any other Loan Document or the DIP Orders, including (x) the Chapter 11 Cases and (y) defending and prosecuting any actions or proceedings arising out of or relating to the Obligations, the liens securing the Obligations, or any transaction related to or arising in connection with this Agreement or the other Loan Documents, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement, any other Loan Document or the DIP Orders, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement, any other Loan Document or the DIP Orders, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement, any other Loan Document or the DIP Orders, (i) any attempt to collect from any Loan Party and (j) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document or the DIP Orders, if any Loan Party or any Subsidiary thereof fail to perform any covenant or agreement contained herein, in any other Loan Document or the DIP Orders, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Loan Parties. The obligations each Loan Party under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents or DIP Orders. This Section shall not apply with

respect to Taxes other than any Taxes that represent losses, claims, or damages, arising from any non-Tax claim.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, subject to the terms of the Interim DIP Order and Final DIP Order and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to all or a portion of its Commitment and any Loan made by it with the written consent of the Collateral Agent and Borrower; provided, however, that no written consent of the Collateral Agent, the Administrative Agent, or Borrower shall be required (A) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender, (B) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender, or (C) in connection with any assignment by a Lender during the continuance of an Event of Default.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least $5,000,000 or a multiple of $1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least $5,000,000 or a multiple of $1,000,000 in excess thereof);

(ii) The parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of $5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender) and all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering or terrorist financing rules and regulations, including the USA PATRIOT Act; and

(iii) No such assignment shall be made to (A) any Loan Party or any of their respective Affiliates or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(d) Upon such execution, delivery and acceptance, from and after the recordation on the Register, (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance

upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s).

(i) If any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and

the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant 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, to the extent that disclosure of information in the Participant Register is necessary to establish that the applicable commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(j) [Reserved].

(k) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans made by it); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrower, the Agents 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 and the other Loan Documents and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document). The Borrower agrees that each participant shall be entitled to the benefits of Sections 2.07 (subject to the requirements and limitations therein, including the requirements under Section 2.07(e) (it being understood that the documentation required under Section 2.07(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section 12.07; provided that (x) a participant shall not be entitled to receive any greater payment under Section 2.07 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a change in applicable law that occurs after the participant acquired the applicable participation.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 12.09 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK (AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE, THE BANKRUPTCY RULES AND THE LOCAL RULES OF THE BANKRTUPCY COURT).

Section 12.10 Consent to Jurisdiction; Service of Process and Venue.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE UNITED STATED BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, AND IF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE DOES NOT HAVE, OR ABSTAINS FROM EXERCISING JURISDICTION, THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (EXCEPT TO THE EXTENT THAT THE PROVISIONS OF THE BANKRUPTCY CODE ARE APPLICABLE AND SPECIFICALLY CONFLICT WITH THE FOREGOING), AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. THE PARTIES HERETO AGREE 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 HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HERETO HEREBY

IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each party hereto irrevocably and unconditionally agrees that it will not commence any action or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the Bankruptcy Court, and if the Bankruptcy Court does not have or abstains from exercising jurisdiction, the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof (except to the extent that the provisions of the Bankruptcy Code are applicable and specifically conflict with the foregoing).

(c) Notwithstanding any other provision of this Section 12.10, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this Agreement or the other Loan Documents.

Section 12.11 Waiver of Jury Trial, etc. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 [Reserved].

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured

Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, the Loan Documents and the DIP Orders, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the "Indemnitees") from and against any and all claims, losses, damages, liabilities, obligations, penalties, fees, reasonable and documented out of pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of (I) Shipman & Goodwin LLP, counsel for the Agents, (II) Willkie Farr & Gallagher LLP, counsel to the Lenders and (III), if necessary, one (1) local counsel in each relevant jurisdiction material to the interests for each of the Indemnitees (taken as a whole) (which may include a single special counsel acting in multiple jurisdictions) (and any successor counsel to each), any regulatory or other special counsel to the Agents reasonably deemed necessary by the Agents and, in the event of any actual conflict of interest, one (1) conflicts counsel in each relevant jurisdiction to each group of affected Lenders that are similarly situated (taken as a whole)) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document, the DIP Orders, the Chapter 11 Cases, any Environmental Claim or any other document executed in connection with the transactions contemplated by this Agreement or the DIP Orders, (ii) any Agent's or any Lender's furnishing of funds to the Borrower under this Agreement, the other Loan Documents or the DIP Orders, including, without limitation, the management of any such Debtor's use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Borrower or the handling of the Collateral of the Borrower and its Subsidiaries as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement, the other Loan Documents, the DIP Orders or by any document executed in connection with the transactions contemplated by this Agreement, the other Loan Documents or the DIP Orders, or (v) any claim, including any litigation, investigation or proceeding relating to or arising out of any of the foregoing, whether or not any Indemnitee is a party thereto and whether or not the transactions contemplated under this Agreement, the Loan Documents or the DIP Orders are consummated (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection for any Indemnified Matters arising solely from (1) the gross negligence or willful misconduct of such Indemnitee or their respective directors, officers, employees, partners or other

representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction or (2) any dispute solely among Indemnitees other than claims arising out of actions or omissions of any Debtor or any of their respective Affiliates.

(b) To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) This Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, or damages, arising from any non-Tax claim. The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that

event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be Paid in Full, refunded by such Agent or such Lender, as applicable, to the Borrower); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be Paid in Full, refunded by such Agent or such Lender to the Borrower). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term "applicable law" means that law in effect from time to time and applicable to the loan transaction between the Borrower, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and its Related Parties) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by or on behalf of the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates, its Related Parties or the Related Parties of any Person described in clause (ii) or (iii) below) (it being understood that the Persons to whom such disclosure is made either will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19 or is subject to other customary confidentiality obligations); (ii) to any other party hereto; (iii) to any assignee (or prospective assignee) so long as such assignee (or prospective assignee) agrees, in writing, to be bound by or is otherwise subject to customary confidentiality obligations (including, without limitation, confidentiality provisions similar in substance to this Section 12.19); (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) 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; (viii) to any other Person if such information is general portfolio information that does not identity the Loan Parties, or (ix) with the consent of the Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to any Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender (which consent may be provided via e-mail), except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will, to the extent practicable to do so consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrower, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Agent and each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrower, which information includes the name and address of each such entity and other information that will allow such Lender or such Agent, as applicable to identify the Borrower in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender or any Agent may reasonably require from time to time in order to enable such Lender or such Agent, as applicable, to comply with the USA PATRIOT Act.

Section 12.23 Judgment Currency. This is an international financial transaction in which the specification of a currency and payment in New York is of the essence. Dollars shall be the currency of account in the case of all payments pursuant to or arising under this Agreement or under any other Loan Document, and all such payments shall be made to the Administrative Agent's Accounts in New York in immediately available funds. To the fullest extent permitted by applicable law, the obligations of each Loan Party to the Secured Parties under this Agreement and under the other Loan Documents shall not be discharged by any amount paid in any other currency or in a place other than to the Administrative Agent's Accounts in New York to the extent that the amount so paid after conversion under this Agreement and transfer to New York does not yield the amount of Dollars in New York due under this Agreement and under the other Loan Documents. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency (the "Other Currency"), to the fullest extent permitted by applicable law, the rate of exchange used shall be that at which the Administrative Agent could, in accordance with normal procedures, purchase Dollars with the Other Currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Secured Parties hereunder shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that, on the Business Day immediately following the date on which the Administrative Agent receives any sum adjudged to be so due in the Other Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with the Other Currency. If the Dollars so purchased are less than the sum originally due to the Secured Parties in Dollars, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Secured Parties against such loss, and if the Dollars so purchased exceed the sum originally due to the Secured Parties in Dollars, the Secured Parties agrees to remit to the Loan Parties such excess.

Section 12.24 Waiver of Immunity. To the extent that any Loan Party has or hereafter may acquire (or may be attributed, whether or not claimed) any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service of process or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such Loan Party hereby irrevocably waives and agrees not to plead or

claim, to the fullest extent permitted by law, such immunity in respect of (a) its obligations under the Loan Documents, (b) any legal proceedings to enforce such obligations and (c) any legal proceedings to enforce any judgment rendered in any proceedings to enforce such obligations. Each Loan Party hereby agrees that the waivers set forth in this Section 12.24 shall be to the fullest extent permitted under the Foreign Sovereign Immunities Act and are intended to be irrevocable for purposes of the Foreign Sovereign Immunities Act.

Section 12.25 Conflict; Control. In the event of any inconsistency between the terms and conditions of the Loan Documents, the Interim DIP Order or the Final DIP Order, the provisions of the Interim DIP Order or Final DIP Order, as the case may be, shall govern and control.

Section 12.26 Bankruptcy Matters. Subject to the terms of the DIP Orders, this Agreement, the other Loan Documents, and all Liens and Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Debtor, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of each Administrative Agent and the Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Debtor to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Administrative Agent and the Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Administrative Agent and the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, the Administrative Agent and the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

Borrower:

APPGATE CYBERSECURITY, INC.

By:_____
Name:
Title:

Guarantors:

APPGATE, INC., as Guarantor

By:_____
Name:
Title:

CRYPTZONE WORLDWIDE, INC., as Guarantor

By:_____
Name:
Title:

CRYPTZONE INTERNATIONAL HOLDINGS, INC., as Guarantor

By:_____
Name:
Title:

CRYPTZONE NORTH AMERICA, INC., as Guarantor

By:_____
Name:
Title:

IMMUNITY, INC., as Guarantor

By:_____
Name:
Title:

IMMUNITY FEDERAL SERVICES, LLC, as Guarantor

By:_____
Name:
Title:

IMMUNITY PRODUCTS, LLC, as Guarantor

By:_____
Name:
Title:

IMMUNITY SERVICES, LLC as Guarantor

By:_____
Name:
Title:

EASY SOLUTIONS ENTERPRISES CORP., as Guarantor

By:_____
Name:
Title:

EASY SOLUTIONS, INC., as Guarantor

By:_____
Name:
Title:

CATBIRD NETWORKS, INC., as Guarantor

By:_____
Name:
Title:

COLLATERAL AGENT AND ADMINISTRATIVE AGENT:

[U.S. BANK TRUST COMPANY, NATIONAL ASSOCATION]

By: _____

Name:
Title:

LENDERS:

By: _____
Name:
Title:

EXHIBIT D

New Limited Liability Company Agreement

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

APPGATE HOLDINGS LLC

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[AMENDED AND RESTATED]

LIMITED LIABILITY COMPANY AGREEMENT

OF

APPGATE HOLDINGS LLC

This [Amended and Restated] Limited Liability Company Agreement of Appgate Holdings LLC (the "Company") is made and entered into as of this [●] day of [●], 2024 (the "Effective Date"), by and among each of the Persons listed on Schedule I hereto as Members.

W I T N E S S E T H :

WHEREAS, the Company was formed as a limited liability company pursuant to the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq., as amended and in effect from time to time) (the "Act") by filing a Certificate of Formation with the Office of the Secretary of State of the State of Delaware on [●], 2024;

WHEREAS, Appgate, Inc. ("Old Appgate") and certain of its direct and indirect Subsidiaries commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time (the "Bankruptcy Code"); in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Old Appgate, certain of its direct and indirect Subsidiaries, and certain other parties agreed to implement the transactions contemplated by that certain Restructuring Support Agreement (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its terms), dated as of [●], 2024 (the "Restructuring Support Agreement");

WHEREAS, pursuant to that certain *Joint Prepackaged Chapter 11 Plan of Reorganization of Appgate, Inc. and Its Debtor Subsidiaries Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") confirmed by the Bankruptcy Court in the jointly administered cases captioned *In re Appgate, Inc.*, et al., Case No. [●] ([●]), pursuant to an order dated [●], 2024, Docket No. [●] (the "Confirmation Order"), the Company has agreed as of the Effective Date to, among other things, issue Series A Units, Series A-1 Units, Series B Units and Class C Units to certain creditors of Old Appgate and its Subsidiaries in exchange for certain Allowed Claims (as described and defined in the Plan) (the "Contributed Claims");

WHEREAS, the Plan or the Confirmation Order provides that this Agreement shall be effective and binding in accordance with the terms and conditions thereof upon all holders of Series A Units, Series A-1 Units, Series B Units, Class C Common Units and Class C-1 Common Units as of the date hereof, who shall be deemed to have executed this Agreement;

WHEREAS, pursuant to the Plan, the Company and the Members are authorized to enter into this Agreement to establish certain rights and obligations with respect to the composition of the Board of Managers and other matters relating to the Units and the governance of the Company;

WHEREAS, Appgate Investors is party to that certain Limited Liability Company Agreement, dated as of [●], 2024, and the Company, Appgate Investors and the other Members desire to amend and restate such Limited Liability Company Agreement in its entirety; and

WHEREAS, the parties hereto wish to enter into this Agreement to, among other things, (i) admit new Members, (ii) provide for management of the Company and (iii) set forth the respective rights and obligations of the Members of the Company.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS[2]

"Act" has the meaning set forth in the Recitals.

"Additional Capital Contribution" means, with respect to each Member, any Capital Contributions made by such Member in addition to the Initial Capital Contribution of such Member.

"Additional Member" means any additional member admitted to the Company pursuant to Section 3.05.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year or other relevant period, after giving effect to the following adjustments:

(i) credit to such Capital Account any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(*4*), 1.704-1(b)(2)(ii)(d)(*5*) and 1.704-1(b)(2)(ii)(d)(*6*).

[2] Note to Draft: To be updated and all cross-references to be confirmed.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Affected Members" has the meaning set forth in Section 10.03.

"Affiliate" of any Person means any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person.

"Affiliate Transaction Approval" has the meaning set forth in Section 4.03(b).

"Agreement" means this Amended and Restated Limited Liability Company Agreement, including all exhibits and schedules hereto, as any of the foregoing may be amended or restated from time to time in accordance with the terms hereof.

"Appgate Entities" means the Company, Appgate, Appgate Cybersecurity, Inc., Appgate Germany GmbH, Catbird Networks, Inc., Cryptzone Group AB, Cryptzone International Holdings, Inc., Cryptzone North America, Inc., Cryptzone UK Ltd., Cryptzone Worldwide, Inc., Easy Solutions Do Brasil Ltda., Easy Solutions Enterprises Corp., Easy Solutions, Inc., Easy Solutions Japan G.K., Easy Solutions S.A.S., Immunity Federal Services, LLC, Immunity, Inc., Immunity Inc. Sucursal Empresa Extranjera, Immunity Products, LLC, Immunity Services, LLC and any direct or indirect Subsidiaries of the Company or any other Appgate Entity (including any Person who becomes such a Subsidiary after the Effective Date) and their respective successors and assigns.

"Appgate Investors" means Appgate Investors, LLC, a Delaware limited liability company, which has been designated by the Magnetar Members to act on their behalf.

"Asset Sale" has the meaning set forth in Section 8.06(a).

"Assumed Tax Rate" means the highest marginal statutory rate of Federal, state and local income tax (including any tax under Section 1411 of the Code on net investment income applicable to an individual resident in New York, New York) taking account of any difference in rates applicable to ordinary income, qualified dividends, capital gains, and any allowable deductions in respect of such state and local taxes in computing such individual's federal income taxes (taking into account any phase-outs related thereto).

"Authorized Representative" has the meaning set forth in Section 13.13(a).

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Board Designation Conditions" has the meaning set forth in Section 4.01(a)(i)(B).

"Board Expenses" has the meaning set forth in Section 4.06(b).

"Board of Managers" has the meaning set forth in Section 4.01(a)(i).

"Book Item" has the meaning set forth in Section 6.05(a).

"Business Day" means any day, excluding Saturday, Sunday and any other day on which commercial banks in New York, New York are authorized or required by law to close.

["Buyer's Equity" has the meaning set forth in Section 5.10.]

"Capital Account" has the meaning set forth in Section 3.08.

"Capital Contributions" means, with respect to any Member, the aggregate amount of cash and the Gross Asset Value of any property (other than cash) contributed to the Company by such Member (or its predecessors in interest) with respect to the Units held by such Member.

"Certificate" means the Certificate of Formation as filed with the Secretary of State of the State of Delaware pursuant to the Act as set forth in the Recitals, as it may be amended or restated from time to time.

"Class C Common Holders" means each Member, Additional Member or Substitute Member, in each case, who holds Class C Common Units (for so long as such Person holds Class C Common Units). If a Class C Common Holder holds different classes of Units, then such Class C Common Holder shall be treated as a Class C Common Holder only with respect to its Class C Common Units.

"Class C Common Rights Holder" means each Class C Common Holder and each Class C-1 Common Holder.

"Class C Common Units" has the meaning set forth in Section 3.03(d).

"Class C-1 Common Holders" means each Member, Additional Member or Substitute Member, in each case, who holds Class C-1 Common Units (for so long as such Person holds Class C-1 Common Units). If a Class C-1 Common Holder holds different classes of Units, then such Class C-1 Common Holder shall be treated as a Class C-1 Common Holder only with respect to its Class C-1 Common Units.

"Class C-1 Common Units" has the meaning set forth in Section 3.03(d).

"Class C Holders" means the Class C PI Holders, the Class C Common Holders and the Class C-1 Common Holders.

"Class C PI Holders" means each Member, Additional Member or Substitute Member, in each case, who holds Class C Profits Interests (for so long as such Person holds Class C Profits Interests). If a Class C Holder holds different classes of Units, then such Class C Holder shall be treated as a Class C Holder only with respect to its Class C Profits Interests.

["Class C Profits Interests" has the meaning set forth in Section 3.03(e).][3]

"Class C Profits Interests Grant" means a written agreement entered into on or after the Effective Date between the Company and applicable Class C Holder pursuant to the MIP that evidences the grant of any Class C Profits Interest and provides for certain terms and conditions of such Class C Profits Interests, including, without limitation, with respect to vesting.

"Class C Units" means the Class C Common Units, the Class C-1 Common Units and the Class C Profits Interests.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Company" has the meaning specified in the introductory paragraph hereof.

"Company Business" has the meaning set forth in Section 2.05(a).

"Company Expenses" has the meaning set forth in Section 4.06(a).

"Company Minimum Gain" has the same meaning as "partnership minimum gain" set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"Company Register" has the meaning set forth in Section 3.01(a).

"Company Representative" means the "partnership representative" within the meaning of Section 6223 of the Code.

"Compensatory Interests" has the meaning set forth in Section 3.06(b)(i).

"Confirmation Order" has the meaning set forth in the Recitals.

"Contributed Claims" has the meaning set forth in the Recitals.

"Control," "Controlled" and "Controlling" mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting Securities, by contract or otherwise.

"Control Sale" has the meaning set forth in Section 8.06(a).

"Covered Business" has the meaning set forth in Section 8.10(b).

[3] Note to Draft: Assumes MIP will be in the form of profits interests. Draft to be updated if the company will check the box to file as a corporation.

"Credit Agreement" means any financing, debt or credit agreement to which any Appgate Entity is a party, at any time and from time to time.

"Customers or Suppliers" has the meaning set forth in Section 8.10(c).

"Drag-Along Notice" has the meaning set forth in Section 8.06(a).

"Effective Date" has the meaning specified in the introductory paragraph hereof.

"Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association or other entity.

["Equity Rollover" has the meaning set forth in Section 5.10.]

"Equity Securities" has the meaning set forth in Section 3.03(a).

"Excluded Securities" means any Series A Units, Series A-1 Units, Series B Units, Class C Units or other Equity Securities:

(i) issued as a dividend or distribution on any of the Units in accordance with this Agreement;

(ii) granted or issued to employees, officers, directors, managers of, or contractors, consultants or advisors to, the Company or any of its Subsidiaries pursuant to incentive agreements, equity purchase agreements, equity option plans, equity bonuses or awards, warrants, contracts or other arrangements that are approved by the Board of Managers and, if applicable, the Required Member Consent;

(iii) issued or issuable in connection with any equipment leases, real property leases, loans, credit lines, guarantees of indebtedness or similar transactions, in each case, approved by the Board of Managers;

(iv) issued as consideration for the acquisition of another Person by the Company or any of its Subsidiaries, whether by consolidation, merger, purchase of equity interests or all or substantially all of the assets, or other transaction;

(v) issued in connection with any equity split, equity dividend or recapitalization of the Company;

(vi) issued pursuant to any public offering and sale pursuant to an effective registration statement under the Securities Act; or

(vii) issued to any person or entity that is not a Magnetar Member.

"Fair Market Value" means, with respect to any assets or Securities, the fair market value for such assets or Securities, as determined in good faith by the Board of Managers; provided,

however, that the Fair Market Value of any publicly traded Securities shall be determined as follows: (i) if the Securities are listed on one or more national securities exchanges or a similarly liquid non-United States securities exchange, the fair market value of such Securities shall be the average of the closing prices as reported for composite transactions on the primary exchange or market for such Securities during the 10 consecutive trading days preceding the trading day immediately prior to the date of valuation, or if no sale occurred on a trading day, then the mean between the closing bid and ask prices on such exchange or market on such trading day; or (ii) if the Securities are traded over-the-counter (other than a liquid non-United States securities exchange), the fair market value of such Securities shall be the arithmetic average (for consecutive trading days) of the mean between the highest bid and lowest asked prices as of the close of business during the 10 consecutive trading days preceding the trading day immediately prior to the date of valuation, as quoted on an automated quotation system or equivalent generally accepted reporting service; provided, further, that any Security that is publicly traded but is subject to contractual or regulatory restrictions on marketability or transfer shall be valued at such discount from the values described in the foregoing proviso as the Board of Managers deems appropriate, taking into account all such restrictions on marketability or transfer of such Security.

"Federal" has the meaning set forth in Section 13.03.

"Fiscal Year" has the meaning set forth in Section 2.07.

"Fundamental Representation" has the meaning set forth in Section 8.06(c).

"GAAP" means generally accepted accounting principles as formulated and interpreted by the Financial Accounting Standards Board in the United States of America.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for Federal income tax purposes, except as follows:

(i) the Gross Asset Value of any asset contributed by a Member to the Company is the gross Fair Market Value of such asset at the time of contribution;

(ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values as of the following times: (a) the acquisition of any additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; (c) the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of becoming a Member; and (d) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a), (b) and (c) above shall be made only if the Board of Managers reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross Fair Market Value of such asset at the time of distribution; and

(iv) the Gross Asset Value of all Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or 743(b) of the Code, if applicable, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this item (iv) to the extent that an adjustment is made at that time pursuant to item (ii) of this definition.

"Imputed Tax Underpayment" has the meaning set forth in Section 7.04(c).

"Indemnified Party" has the meaning set forth in Section 4.07(a).

"Indirect Transfer" means any Transfer of any equity securities of (i) any Member which does not hold any Securities of any Person other than Units or (ii) any Affiliate of such Member, which Affiliate does not hold any Securities of any Person other than Equity Securities, directly or indirectly, of such Member.

"Individual Agreement" has the meaning set forth in the definition of "Termination for Cause".

"Initial Capital Contributions" has the meaning set forth in Section 3.01(a).

"Initial Public Offering" means any underwritten initial public offering of Securities of the Company or any of its Subsidiaries pursuant to an effective registration statement filed under the Securities Act.

"Initial Subscribers" has the meaning set forth in Section 3.04(c).

"IRS Adjustment" has the meaning set forth in Section 7.04(c).

"Issuance Notice" has the meaning set forth in Section 3.04(a).

"Liquidator" has the meaning set forth in Section 9.03(b).

"Magnetar Demand Right" has the meaning set forth in Section 11.02(a).

"Magnetar Indemnitors" has the meaning set forth in Section 4.07(d).

"Magnetar Managers" has the meaning set forth in Section 4.01(a)(i)(A).

"Magnetar Members" means each of (i) Appgate Investors, (ii) the Affiliates and Permitted Transferees of Appgate Investors or any other Magnetar Member who hold or own Units and (xi) their respective Affiliates or Permitted Transferees who hold or own Units (provided that no such Permitted Transferee shall be a "Magnetar Member" pursuant to subsection (x) or (xi) of this

definition unless so designated by Appgate Investors, in its sole discretion). Any and all decisions permitted or required to be made by the Magnetar Members shall be made by Appgate Investors, in its sole discretion, and shall be binding on all other Magnetar Members.

"Magnetar Sale" has the meaning set forth in Section 8.06(a).

"Majority Vote Manager" has the meaning set forth in Section 4.01(a)(i)(A).

"Management Member" means any Member or [member of Management Vehicle][4] who is an employee or consultant of or that provides services to the Company or any Appgate Entity. In no event shall any Magnetar Member, [Appgate Funding, LLC or Medina][5] be deemed to be a Management Member.

"Management Units" means (i) the Class C Profits Interests held by Management Members or their Permitted Transferees and (ii) any Securities issued, directly or indirectly, to the Management Members or their Permitted Transferees with respect to the foregoing Securities by way of a split, dividend, or other division of securities, or in connection with a combination of securities, recapitalization, merger, consolidation, or other reorganization. Management Units shall cease to be Management Units if and when they have been forfeited or repurchased by the Company or its assignee pursuant to Section 8.08.

"Management Vehicle" means APGT Management Holdings LLC, a Delaware limited liability company.

"Managers" has the meaning set forth in Section 4.01(a)(i).

"Medina" means Mr. Manuel D. Medina.

"Medina Indemnitors" has the meaning set forth in Section 4.07(d).

"Member Contributed Assets" has the meaning set forth in Section 5.09.

"Member Directly Contributed Assets" has the meaning set forth in Section 5.09.

"Member Nonrecourse Debt" has the same meaning as the term "partner nonrecourse debt" set forth in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member

[4] Note to Draft: Back-to-back mechanics to be added.

[5] Note to Draft: Subject to resolution of Medina employment status.

Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"Member Nonrecourse Deduction" has the meaning set forth in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"Members" means, collectively, the Series A Members, the Series A-1 Members, the Series B Members, the Class C Holders, any Additional Members and any Substitute Members.

"MIP" means the management incentive plan adopted and approved by the Board consistent with the RSA Term Sheet.

"Net Income" and "Net Loss" means, for each Fiscal Year or other relevant period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss) with the following adjustments (without duplication):

(i) any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this paragraph shall be added to such income or loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this paragraph, shall be subtracted from such taxable income or loss;

(iii) in the event the Gross Asset Value of any Company asset is adjusted pursuant to subdivision (ii) or (iii) of the definition of "Gross Asset Value" herein, or pursuant to subdivision (iv) of the definition of "Gross Asset Value" herein other than as a result of a distribution in complete liquidation of a Member's Units, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(iv) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) in lieu of depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, such amounts shall instead be determined in accordance with the requirements of Regulations Section 1.704-1(b)(2)(iv)(g); and

(vi) any items which are specially allocated pursuant to the provisions of Section 6.03 shall not be taken into account in computing Net Income or Net Loss but shall be determined in a manner consistent with the foregoing provisions.

"New Securities" means Equity Securities, other than Excluded Securities.

"Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Regulations Section 1.704-2(b)(3).

"Officer" has the meaning set forth in Section 4.05.

"Old Appgate" has the meaning set forth in the Recitals.

"Operating Partners" has the meaning set forth in Section 4.03(b).

"Participation Threshold" means, as to any Class C Profits Interests, the amount set forth in the applicable Class C Profit Interests Grant.

"Percentage Interest" of any Class C Common Rights Holder means, on any date of determination, the product of (i) 100% and (ii) a fraction, the numerator of which is the number of Class C Common Units, Class C-1 Common Units or other Units (other than the Series A Units, Series A-1 Units, Series B Units, and Class C Profits Interests) then held by such Class C Common Rights Holder, as applicable, and the denominator of which is the aggregate number of all Class C Common Units, Class C-1 Common Units and other Units (other than the Series A Units, Series A-1 Units, Series B Units and Class C Profits Interests) then held by all Class C Common Rights Holders.

"Permitted Transferee" means, (i) with respect to any Member who is an individual, any spouse, lineal descendant, sibling, parent, heir, executor, administrator, testamentary trustee, legatee or beneficiary of such Member or any trust or other Entity Controlled by such Member for the benefit of any such Person, solely for estate planning purposes, (ii) with respect to any Member that is an Entity, any Affiliate of such Member or (iii) with respect to a Magnetar Member, (v) any third party investor, or Entity who is a partner of, or otherwise provides financing to, a Magnetar Member or any Affiliate thereof, (w) any Person to whom a pledge or granting of a security interest (including the right to foreclose thereon) is made in connection with providing debt financing to a Magnetar Member or its Affiliates, (x) any Entity who desires to invest in the Company, (y) its partners, limited partners, members, equityholders or direct or indirect beneficial owners to which a distribution is made to the extent required by a Magnetar Member's organizational documents or in connection with any dissolution of a Magnetar Member, or (z) to any parallel investment funds, co-investment funds, successor investment funds and other investment vehicles under common management with a Magnetar Member or any Affiliate thereof; provided that Transfers effected by a Magnetar Member pursuant to clause (iii) of this definition through repurchases or reissuances of Units shall be deemed Transfers to Permitted Transferees.

"Person" means any natural person or Entity.

"Plan" has the meaning set forth in the Recitals.

"Preemptive Right Electing Member" has the meaning set forth in Section 3.04(b).

"Preemptive Right Pro-Rata Percentage" of any Member means, on any date of determination, the product of (i) 100% and (ii) a fraction, the numerator of which is the number of Class C Common Units, Class C-1 Common Units or other Units (other than the Series A Units, Series A-1 Units, Series B Units and Class C Profits Interests) then held by such Member, and the denominator of which is the aggregate number of all Class C Common Units, Class C-1 Common Units and other Units (other than the Series A Units, Series A-1 Units, Series B Units, and Class C Profits Interests) then held by all Members.

"Prime Rate" means the highest prime rate of interest quoted from time to time by The Wall Street Journal as the "base rate" on corporate loans at large money center commercial banks.

"Profits Interest" has the meaning set forth in Section 3.06(a).

"Protected Entities" has the meaning set forth in Section 8.10(a).

"Proposed Rules" has the meaning set forth in Section 3.06(b)(i).

"Public Offering Notice" has the meaning set forth in Section 11.02(b).

"Purchase Notice" has the meaning set forth in Section 8.08(c).

"Purchase Option" has the meaning set forth in Section 8.08(b).

"Registrable Securities" has the meaning set forth in Section 11.02(b).

"Regulations" means the Income Tax Regulations promulgated under the Code, as amended.

"Regulatory Allocations" has the meaning set forth in Section 6.03(j).

"Remaining New Securities" has the meaning set forth in Section 3.05.

"Repurchase Fair Market Value" means the Fair Market Value of any Unit, determined as if the Company was hypothetically liquidated in accordance with Article IX.

"Required Member Consent" has the meaning set forth in Section 4.03(a).

"Reserves" means the amount of proceeds that the Board of Managers determines in good faith and in its discretion is necessary to be maintained by the Company for the purpose of paying reasonably anticipated Company Expenses and other liabilities and obligations of the Company.

"Restricted Period" has the meaning set forth in Section 8.10(a).

"Restrictive Covenant Agreements" means (i) those certain restrictive covenant agreements pursuant to which Members agree to certain non-interference, non-solicitation, non-hire, non-competition, confidentiality or other restrictive covenants or (ii) any other agreement which includes such restrictive covenants, in each case with one or more Appgate Entities.

"Restructuring Support Agreement" has the meaning set forth in the Recitals.

"Safe Harbor Election" has the meaning set forth in Section 3.06(b)(i).

"Section 83(b) Election" has the meaning set forth in Section 3.06(a).

"Securities" means securities of every kind and nature, including Units, stock, equity interests, notes or bonds, or options or warrants to acquire or convertible into any of the foregoing.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Series A Member" means each Member, Additional Member or Substitute Member, in each case, who holds Series A Units (for so long as such Person holds Series A Units). If a Series A Member holds different classes of Units, then such Series A Member shall be treated as a Series A Member only with respect to its Series A Units.

"Series A Threshold" has the meaning set forth in Section 5.02(c).

"Series A Units" has the meaning set forth in Section 3.03(b).

"Series A-1 Member" means each Member, Additional Member or Substitute Member, in each case, who holds Series A-1 Units (for so long as such Person holds Series A Units). If a Series A-1 Member holds different classes of Units, then such Series A-1 Member shall be treated as a Series A-1 Member only with respect to its Series A-1 Units.

"Series A-1 Units" has the meaning set forth in Section 3.03(b).

"Series B Members" means each Member, Additional Member or Substitute Member, in each case, who holds Series B Units (for so long as such Person holds Series B Units). If a Series B Member holds different classes of Units, then such Series B Member shall be treated as a Series B Member only with respect to its Series B Units.

"Series B Threshold" has the meaning set forth in Section 5.02(b).

"Series B Units" has the meaning set forth in Section 3.03(c).

"Significant Member" means, as of a particular date, each Class C Common Member holding a Percentage Interest (when aggregated with the Percentage Interest of its Affiliates and Permitted Transferees) equal to or greater than 5.0 % as of such date. For the avoidance of doubt, no Series A-1 Member or Class C-1 Member shall be or be deemed to be a Significant Member hereunder.

"Subscription Agreement" means a subscription agreement, contribution agreement, issuance agreement or similar written agreement (other than the Class C Profits Interests), by and between the Company and a Member, pursuant to which such Member acquires Units in the Company.

"Subscription Period" has the meaning set forth in Section 3.04(b).

"Subsidiary" of any Person means any other Person of which a majority of the outstanding voting Securities or other voting equity interests, or a majority of any other interests having the power to direct or cause the direction of the management and policies or such other Person, are owned, directly or indirectly, by such first Person.

"Substitute Member" means any Person who acquires Units from any Member, in each case, in accordance with and pursuant to the terms and conditions of this Agreement. Each such Person shall agree, in writing, to be bound as a Member and shall execute any documents and make any representations, warranties and covenants, in each case, required by the Board of Managers.

"Substituted Basis Assets" has the meaning set forth in Section 5.09.

"Tag Along Member" has the meaning set forth in Section 8.07.

"Tag Along Rights" has the meaning set forth in Section 8.07.

"Tag Notice" has the meaning set forth in Section 8.07.

"Tag Sale" has the meaning set forth in Section 8.07.

"Tag Seller" has the meaning set forth in Section 8.07.

"Tax Audit Rules" means (i) Sections 6221 through 6241 of the Code and any Regulations promulgated or amended, from time to time, thereunder, and any guidance with respect thereto and (ii) any substantially similar state, local or non-U.S. tax audit rules.

"Tax Distribution" has the meaning set forth in Section 5.04(a).

"Tax Distribution Formula" has the meaning set forth in Section 5.04(b).

"Termination Date" has the meaning set forth in Section 8.08(a).

"Termination for Cause" means (i) if a Management Member is party to an effective employment, consulting, severance or similar agreement with any Appgate Entity (an "Individual Agreement"), which Individual Agreement includes a definition of "Cause" (or any similar phrase or construct), any event, occurrence or circumstance constituting "Cause" as defined in (or any similar phrase or construct set forth in) such agreement, (ii) if a Management Member is party to a Class C Profits Interests Grant which includes a definition of "Cause" (or any similar phrase or

construct) and clause (i) does not apply to such Management Member, any event, occurrence or circumstance constituting "Cause" as defined in (or any similar phrase or construct set forth in) such agreement, or (iii) if a Management Member is not party to an Individual Agreement or Class C Profits Interests Grant that includes a definition of "Cause" (or any similar phrase or construct), (A) commission of fraud or an intentional act of dishonesty that in either case results in material personal enrichment of the Management Member or has a material detrimental effect on the Company or any Appgate Entity; (B) the Management Member's commission of a felony; (C) the Management Member's material breach of any provision of his or her employment agreement, Restrictive Covenant Agreement, this Agreement or any other written agreement between the Company or any Appgate Entity, on the one hand, and with the Management Member, on the other hand; (D) the Management Member's intentional wrongful act or gross negligence that has a material detrimental effect on the Company or any Appgate Entity; or (E) the Management Member's willful refusal to follow the reasonable instructions of the Board of Managers or the board of directors (or similar governing body) of any Appgate Entity, in each case, that, to the extent curable, is not cured within 10 days of written notice or such longer period as may reasonably be required for the Management Member to cure such breach.

"Transactions" has the meaning set forth in Section 13.16.

"Transfer" means any voluntary or involuntary transfer, sale, pledge, assignment, hypothecation or other disposition, including (i) by way of merger, consolidation or otherwise or (ii) any Indirect Transfer.

"Units" means, collectively, the Series A Units, Series A-1 Units, Series B Units, Class C Units and any other Equity Securities created and issued by the Board of Managers in accordance with this Agreement.

"Unreturned Capital Contributions" means, with respect to each Member, at any time of determination, the aggregate amount of such Member's Capital Contributions less the amount of distributions received by such Member (or its predecessors in interest) under Section 5.02(a) of this Agreement (for the avoidance of doubt, excluding Tax Distributions). All Class C Profits Interests shall be deemed to have an Unreturned Capital Contribution equal to $0 at all times.

"Unvested Unit" has the meaning set forth in Section 5.03(b).

"Willkie" has the meaning set forth in Section 13.16.

"Withholding Tax Evidence" has the meaning set forth in Section 8.01(c).

ARTICLE II

ORGANIZATION

Section 2.01 Formation of Company. The Company has previously been formed pursuant to the Act. The rights and liabilities of the Members shall be as provided for in the Act if not otherwise expressly provided for in this Agreement.

Section 2.02 Name. The name of the Company is "Appgate Holdings, LLC". The business of the Company shall be conducted under such name or under such other names as the Board of Managers may deem appropriate. No value shall be placed upon the name or the goodwill attached thereto for the purpose of determining the Fair Market Value of any Member's Capital Account or Units.

Section 2.03 Office; Agent for Service of Process. The address of the Company's registered office in Delaware is [c/o Corporation Trust Company, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801][6]. The name and address of the registered agent in Delaware for service of process is [The Corporation Trust Company, Corporation Trust Company, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801][7]. The Board of Managers may change the registered office and the registered agent of the Company from time to time. The Company shall maintain a principal place of business and office(s) at such place or places as the Board of Managers may from time to time designate.

Section 2.04 Term. The Company commenced on the date of the filing of the Certificate, and the term of the Company shall continue until the dissolution of the Company in accordance with the provisions of Article IX.

Section 2.05 Purpose and Scope.

(a) The purpose and business of the Company is to, directly or indirectly, hold and exercise rights with respect to the equity interests of the Appgate Entities and any other purpose or business related to the assets, operations or businesses of any of the Appgate Entities (collectively, the "Company Business"), and to engage in any and all activities that are incidental or ancillary thereto.

(b) The Company shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the Company Business and for the protection and benefit of the Company and its Subsidiaries, and,

[6] Note to Draft: To be confirmed.

[7] Note to Draft: To be confirmed.

subject to Section 4.03, all such power shall be exercised by the Board of Managers, on behalf of the Company, pursuant to this Agreement (including pursuant to Section 2.06 hereof).

Section 2.06 Authorized Acts. The Board of Managers, on behalf of the Company, is hereby authorized and empowered, subject to Section 4.03:

(a) to do any and all things, and perform any and all acts, necessary or incidental to the Company Business;

(b) to enter into, and take any action under, any contract, agreement or other instrument as the Board of Managers shall determine to be necessary or desirable to further the objects and purposes of the Company or the Company Business, including contracts or agreements with any Member or prospective Member;

(c) to open, maintain and close bank accounts and draw checks or other orders for the payment of money and open, maintain and close brokerage, money market fund and similar accounts;

(d) to hire, for usual and customary payments and expenses, consultants, brokers, attorneys, accountants and such other agents for the Company as it may deem necessary or advisable, and authorize any such agent to act for and on behalf of the Company;

(e) to incur expenses and other obligations on behalf of the Company in accordance with this Agreement, and, to the extent that funds of the Company are available for such purpose, pay all such expenses and obligations;

(f) to bring and defend actions and proceedings at law or in equity and before any governmental, administrative or other regulatory agency, body or commission;

(g) to establish Reserves in accordance with this Agreement or the Act for contingencies and for any other purpose of the Company;

(h) to prepare and file all necessary returns and statements, pay all taxes, assessments and other impositions applicable to the assets of the Company, and withhold amounts with respect thereto from funds otherwise distributable to any Member;

(i) to determine the accounting methods and conventions to be used in the preparation of any accounting or financial records of the Company;

(j) to cause any of the Appgate Entities to do any of the foregoing; and

(k) to act for and on behalf of the Company in all matters incidental to the foregoing.

Section 2.07 Fiscal Year. The fiscal year (the "Fiscal Year") of the Company shall end on the last day of each calendar year or such other date as determined by the Board of Managers.

The Company shall have the same Fiscal Year for Federal income tax purposes and for accounting purposes, except as otherwise required by Section 706 of the Code and the Regulations promulgated thereunder.

ARTICLE III

CAPITAL CONTRIBUTIONS, UNITS AND MEMBERS

Section 3.01 Capital Contributions.

(a) As of [●], 2024, each Series A Member has made initial Capital Contributions in respect of its Series A Units and Class C Common Units, each Series A-1 Member has made initial Capital Contributions in respect of its Series A-1 Units and Class C-1 Common Units and each Series B Member has made initial Capital Contributions in respect of its Series B Units and Class C Common Units (the "Initial Capital Contributions"), each in the form of Contributed Claims in the amount set forth opposite its name on Schedule I and as reflected in a register of the Company, maintained by the Company in accordance with Article VII (the "Company Register").

(b) No Member shall be required to make any Additional Capital Contributions to the Company except as required by any Subscription Agreement entered into by the Company and the applicable Member. No Member shall be permitted to make any Additional Capital Contributions to the Company (except in respect of the purchase of New Securities pursuant to Section 3.04) without the prior written consent of the Board of Managers.

(c) No interest shall be paid to any Member on any Capital Contributions. All Capital Contributions shall be denominated and payable in U.S. dollars. Each of the Members acknowledges that its Capital Contributions are subject to the claims of any and all creditors of the Company to the extent provided by the Act and other applicable law.

Section 3.02 Schedule of Units and Members; Ownership of Units. Schedule I shall set forth the Initial Capital Contributions made by and the number and class of Units held by each Member. As of [●], 2024 each Series A Member owns the number of Series A Units and Class C Common Units as appears next to his, her or its name on Schedule I hereto. As of [●], 2024 each Series A-1 Member owns the number of Series A-1 Units and Class C-1 Common Units as appears next to his, her or its name on Schedule I hereto. As of [●], 2024, each Series B Member owns the number of Series B Units and Class C Common Units as appears next to his, her or its name on Schedule I. Schedule I shall be amended or restated by the Board of Managers from time to time to reflect Additional Capital Contributions, issuances, transfers or assignments of Units, forfeitures or repurchases of Units pursuant to Section 8.08, admissions, resignations or withdrawals of Members or other changes to the capitalization of the Company, in each case, pursuant to the terms of this Agreement. Notwithstanding anything in this Section 3.02 or in this Agreement to the contrary, the Board of Managers shall have the right to maintain the confidentiality of Schedule I to this Agreement such that each Member shall only receive information from Schedule I related to the number of Units held by such Member and the aggregate number and class of Units issued

and outstanding (but, for the avoidance of doubt, no information regarding the number or class of Units held by any other Member).

Section 3.03 Creation and Issuance of Equity Securities.

(a) Subject to Section 4.03(a), the Board of Managers shall have the sole authority to create and issue any equity Securities of the Company or any Appgate Entity, including any new class of Units, any additional Series A Units, Series A-1 Units, Series B Units, Class C Common Units, Class C-1 Common Units, Class C Profits Interests and any Security convertible into equity Securities of the Company (collectively, "Equity Securities") in such amounts and at such purchase price for such Equity Security as determined by the Board of Managers; provided, however, that no such Equity Securities (other than Excluded Securities) shall be issued unless the Company has complied with the terms and conditions of Sections 3.04 or 3.05 with respect to such issuance of Equity Securities. Any such Equity Securities shall be issued on the same date on which the applicable purchaser thereof makes the applicable Capital Contributions to the Company.

(b) Without limiting the generality of Section 3.03(a), subject to Sections 3.04 and 3.05 and, if required, subject to obtaining the Required Member Consent pursuant to Section 4.03(a), the Company shall have the authority to issue an unlimited number of Series A Units (the "Series A Units") and Series A-1 Units (the "Series A-1 Units") for such consideration as the Board of Managers deems appropriate.

(c) Without limiting the generality of Section 3.03(a), subject to the terms and conditions of this Agreement and, if required, subject to obtaining the Required Member Consent pursuant to Section 4.03(a), the Company shall have the authority to issue an unlimited number of Series B Units (the "Series B Units") for such consideration as the Board of Managers deems appropriate.

(d) Without limiting the generality of Section 3.03(a), subject to the terms and conditions of this Agreement and, if required, subject to obtaining the Required Member Consent pursuant to Section 4.03(a), the Company shall have the authority to issue an unlimited number of Class C Common Units (the "Class C Common Units") and Class C-1 Common Units (the "Class C-1 Common Units") for such consideration as the Board of Managers deems appropriate.

(e) Without limiting the generality of Section 3.03(a), subject to the terms and conditions of this Agreement, the MIP and, if required, subject to obtaining the Required Member Consent pursuant to Section 4.03(a), the Company shall have the authority to issue an unlimited number of Class C Profits Interests (the "Class C Profits Interest"), in each case, to employees, consultants or services providers of the Company or any of the Appgate Entities in consideration for the provision of services to, or for the benefit of, the Company or any of the Appgate Entities.

Section 3.04 Preemptive Rights.

(a) In the event that the Company or any Appgate Entity proposes to issue New Securities to any Person, in each case, the Board of Managers shall provide written notice thereof to each Class C Common Rights Holder (an "Issuance Notice"). The Issuance Notice shall set forth (i) the Company's or such Appgate Entity's bona fide intention to offer such New Securities, (ii) the number of such New Securities that are available for issuance pursuant to this Section 3.04 and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) For a period of 10 days from delivery of the Issuance Notice, each Class C Common Rights Holder shall have the right to elect, by giving written notice to the Company, to purchase up to its respective Preemptive Right Pro-Rata Percentage of the New Securities available for issuance pursuant to this Section 3.04. At the expiration of such 10 day period, the Company shall promptly notify in writing each Class C Common Rights Holder that elects to purchase its full Preemptive Right Pro-Rata Percentage of such New Securities (each a "Preemptive Right Electing Member") of any other Class C Common Rights Holder's failure to do so. For a period of 5 days (the "Subscription Period") after the Company has delivered such notice, each Preemptive Right Electing Member may, by giving written notice to the Company, elect to purchase up to its Preemptive Right Pro-Rata Percentage of the New Securities that were not subscribed for by the other Class C Common Rights Holders pursuant to the first sentence of this Section 3.04(b). If at the end of the Subscription Period (i) there remain New Securities that have not been subscribed for by such Class C Common Rights Holder and the Preemptive Right Electing Members and (ii) there remain additional Preemptive Right Electing Members who wish to subscribe for additional New Securities, then the Company shall follow the procedures set forth in the second sentence of this Section 3.04(b) as frequently as necessary during the 2 day period immediately following the end of the Subscription Period until all such remaining New Securities have been fully subscribed for or there are no longer any Preemptive Right Electing Members who wish to subscribe for additional New Securities; provided, however, if at any time there is only one Preemptive Right Electing Member who wants to buy additional New Securities, such Preemptive Right Electing Member shall have the option to purchase up to the entire amount of the then available additional New Securities.

(c) In the event that the Board of Managers determines in good faith that the Company or any Appgate Entity has a time sensitive need to issue New Securities to any Person and receive the applicable Capital Contributions or purchase price for such New Securities, the Board of Managers shall have the right to cause the Company or such Appgate Entity to issue any or all of such New Securities to one or more Class C Common Rights Holders (the "Initial Subscribers") prior to the expiration of the applicable exercise periods set forth in Section 3.04(b) above. In the event that the Board of Managers exercises such right, not later than 90 days after the issuance of the New Securities pursuant to this Section 3.04(c), the Company or such Appgate Entity shall offer the Class C Common Rights Holders their respective rights to purchase such New Securities pursuant to Section 3.04(b) above and, in the event that one or more Class C Common Rights Holder exercises such rights, the Initial Subscribers shall sell back to the Company such issued New Securities, and the Company or such Appgate Entity shall reissue such New Securities as necessary to put each Class C Common Rights Holder in the same position,

relative to the other Class C Common Rights Holders, as they would have been if the New Securities issued pursuant to this Section 3.04(c) were initially offered and issued pursuant to Section 3.04(b).

(d) Any New Securities issued pursuant to this Section 3.04 shall be issued by the Company or such Appgate Entity and shall be purchased by the applicable Class C Common Rights Holders as promptly as practicable following the expiration of the exercise periods set forth in this Section 3.04. For purposes of this Section 3.04, subject to the last sentence of this Section 3.04(d), a Magnetar Member shall be entitled to apportion its right to purchase New Securities among itself and its Affiliates in such proportions as it deems appropriate. No Class C Common Rights Holder shall have the right to purchase New Securities pursuant to this Section 3.04 unless such Class C Common Rights Holder is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act and, at the request of the Board of Managers, such Class C Common Rights Holder makes the representations, warranties and acknowledgement in Article XII with respect to the purchase of New Securities.

Section 3.05 Issuance of Equity Securities to Third Parties. In the event that the Company or any Appgate Entity proposes to issue New Securities and any portion of the New Securities are not purchased by the Members pursuant to Section 3.04 (the "Remaining New Securities"), the Company or the applicable Appgate Entity may issue such Remaining New Securities to Persons who are not then Members in exchange for the applicable Capital Contributions or purchase price for such Remaining New Securities; provided, however, (i) such Remaining New Securities shall be issued to such Persons on terms that are no less favorable to the Company or the applicable Appgate Entity than the terms and conditions offered to the Members pursuant to Section 3.04 (and, in any event, at a price per Remaining New Security that is equal to or greater than the price per New Security offered to the Members pursuant to Section 3.04), (ii) such Person agrees, in a writing acceptable to the Board of Managers, to be bound by this Agreement as an "Additional Member" and a "Member" and to hold such Remaining New Securities subject to the terms and conditions of this Agreement, (iii) such Person is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act and (iv) such Person executes and delivers any additional written instruments, and makes any additional representations and warranties, with respect to the Remaining New Securities, as requested by the Board of Managers. Each Additional Member purchasing such Remaining New Securities pursuant to this Section 3.05 shall thereafter be entitled to all the rights and subject to all the obligations of a Member as set forth herein.

Section 3.06 Class C Profits Interests as Profits Interests.

(a) The Company and each Member agree to treat each Class C Profits Interest issued to any existing or new employee, officer, director, manager, independent contractor, consultant, advisor or other service provider of the Company or any of the other Appgate Entities pursuant to a Class C Profits Interest Grant as a separate "profits interests" within the meaning of Rev. Proc. 93-27, 1993-2 C.B. 343, and Rev. Proc. 2001-43, 2001-2 CB 191 (a "Profits Interest") and it is the intention of the Members that distributions pursuant to Section 5.02 with respect to each such Unit shall be limited to the extent necessary so that such Unit qualifies as a "Profits Interest" and this Agreement shall be interpreted accordingly. Without limiting the generality of

the foregoing, each Class C Profits Interest that is intended to be a Profits Interest shall have a Participation Threshold calculated in the aggregate. The Board of Managers shall be authorized to adjust such Participation Threshold thereafter to take into account redemptions or repurchases of Units capital contributions to the Company or other events determined appropriate by the Board of Managers to ensure that the Units intended to be treated as Profits Interests remain treated as such. In accordance with Rev. Proc. 2001-43, the Company shall treat a Member holding a Class C Profits Interest as the owner of such Unit from the date it is granted (irrespective of vesting), and shall file its IRS Form 1065, and issue appropriate Schedule K-1s to such Member, allocating to such Member its distributive share of all items of income, gain, loss, deduction and credit associated with such Profits Interest as if it were fully vested. Each Member holding a Profits Interest agrees to take into account such distributive share in computing its Federal income tax liability for the entire period during which it holds the Profits Interest. The Company and each Member agree not to claim a deduction (as wages, compensation or otherwise) for the Fair Market Value of such Class C Profits Interests, either at the time of grant of the Class C Profits Interests or at the time the Class C Profits Interests become substantially vested. The undertakings contained in this Section 3.06 shall be construed in accordance with Section 4 of Rev. Proc. 2001-43. Each Member issued a Profits Interest shall timely file an election pursuant to Section 83(b) of the Code (a "Section 83(b) Election") with respect to its Profits Interest following receipt of such Profits Interest. The provisions of this Section 3.06 shall apply regardless of whether or not a Member files a Section 83(b) Election with respect to its Profits Interest.

(b) (i) The Board of Managers is hereby authorized and directed to cause the Company to make an election to value any Units issued by the Company as compensation for services to be performed to or for the benefit of the Company (collectively, "Compensatory Interests") at liquidation value (the "Safe Harbor Election"), as of the date of the grant for purposes of the Section 83(b) Election, as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and IRS Notice 2005-43 (collectively, the "Proposed Rules"). The Board of Managers shall cause the Company to make any allocations of items of income, gain, deduction, loss or credit (including forfeiture allocations and elections as to allocation periods) necessary or appropriate to effectuate and maintain the Safe Harbor Election.

(ii) Any such Safe Harbor Election shall be binding on the Company and on all of its Members with respect to all Transfers of Compensatory Interests thereafter made by the Company while a Safe Harbor Election is in effect. A Safe Harbor Election once made may be revoked by the Board of Managers as permitted by the Proposed Rules or any applicable rule.

(iii) Each Member (including any Person to whom a Compensatory Interest is Transferred in connection with the performance of services), by signing this Agreement or by accepting such Transfer, hereby agrees to comply with all requirements of the Safe Harbor Election with respect to all Compensatory Interests transferred while the Safe Harbor Election remains effective.

(iv) The Board of Managers shall file or cause the Company to file all returns, reports and other documentation as may be required to perfect and maintain the Safe

Harbor Election with respect to Transfers of Compensatory Interests covered by such Safe Harbor Election.

(v) Notwithstanding anything to the contrary in this Agreement (including Article X), the Board of Managers is hereby authorized and empowered, without further vote or action of the Members, to amend this Agreement as necessary to comply with the Proposed Rules or any rule, in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same, and shall have the authority to execute any such amendment by and on behalf of each Member. Any undertakings by the Members necessary to enable or preserve a Safe Harbor Election may be reflected in such amendments and to the extent so reflected shall be binding on each Member, respectively.

(vi) Each Member agrees to cooperate with the Board of Managers to perfect and maintain any Safe Harbor Election, and to timely execute and deliver any documentation with respect thereto reasonably requested by the Board of Managers.

(vii) Without limitation of any other provision herein, no Transfer of any Profits Interest in the Company by a Member, to the extent permitted by this Agreement, shall be effective unless prior to such Transfer, the transferee, assignee or intended recipient of such Profits Interest shall have agreed in writing to be bound by the provisions of this Section 3.06, in form satisfactory to the Board of Managers.

Section 3.07 Withdrawals. Except as expressly provided in this Agreement, no Member shall have any right (a) to withdraw as a Member from the Company, (b) to withdraw from the Company all or any part of such Member's Capital Contributions, (c) to receive property other than cash in return for such Member's Capital Contributions or (d) to receive any distribution from the Company, except in accordance with Article V and Section 9.03.

Section 3.08 Capital Accounts. There shall be established and maintained for each Member a separate capital account ("Capital Account"). There shall be added to the Capital Account of each Member (i) such Member's Capital Contributions, (ii) such Member's distributive share of Net Income and any item in the nature of income or gain that is specially allocated to the Member pursuant to Section 6.03, and (iii) the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member. There shall be subtracted from the Capital Account of each Member (i) the amount of any money, and the Gross Asset Value of any other property, distributed to such Member, (ii) such Member's distributive share of Net Loss and any item in the nature of loss or expense that is specially allocated to such Member pursuant to Section 6.03, and (iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company. In the event Units in the Company are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the transferred Units. The foregoing provision and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In determining the amount of any liability for purposes of this Section 3.08,

there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

Section 3.09 No Deficit Restoration Obligation. At no time during the term of the Company or upon dissolution and liquidation thereof shall a Member with a negative balance in its Capital Account have any obligation to the Company or the other Members to restore such negative balance, except as may be required by law.

ARTICLE IV

MANAGEMENT, DUTIES AND INDEMNIFICATION

Section 4.01 Management and Control of the Company.

(a) Board Composition.

(i) The Company shall be a "board of managers-managed" limited liability company. The Members have agreed to designate a board of managers (the "Board of Managers") which shall have [five (5)] Persons (the "Managers"), subject to expansion or contraction pursuant to Section 4.01(a)(ii) below. Appgate Investors and the Board of Managers, as contemplated by this Section 4.01, shall have the exclusive right (subject to the right of Medina contemplated in Section 4.01(a)(i)(B) below) to designate the Managers to the Board of Managers, and the Members agree to take any and all actions necessary for the Board of Managers to be comprised as follows:

(A) Four (4) Managers designated by Appgate Investors (the "Magnetar Managers"), who shall initially include [●] (the "Majority Vote Manager"), [●], [●] and [●]; and

(B) So long as Appgate Funding, LLC or its Permitted Transferees, in the aggregate, (i) directly or indirectly own 50% of the Class C Common Units held, in the aggregate, by them at the time of the consummation of the transactions contemplated under the Restructuring Support Agreement and (ii) neither Medina nor any Affiliate thereof is in breach or violation of any non-solicitation, non-competition, non-disclosure or similar restrictive covenant, contemplated by any employment agreement between Medina and Appgate Cybersecurity Inc., at any time ((i) and (ii), the "Board Designation Conditions"), Medina shall be a Manager.

(ii) The size of the Board of Managers may be expanded or contracted with the prior written approval of Appgate Investors; provided that no such contraction will remove or replace Medina, or eliminate the Manager seat to which he is entitled, so long as the Board Designation Conditions are satisfied. In the event that the size of the Board of Managers is increased, any vacancies created thereby shall be filled by Appgate Investors. In the event of any other vacancy on the Board of Managers, either (A) such vacancy shall be filled by Appgate

Investors or (B) Appgate Investors shall elect to decrease the size of the Board of Managers to eliminate the vacancy.

(iii) Each Manager appointed shall serve until a successor is appointed in accordance with the terms hereof or his or her earlier resignation, death or removal. Appgate Investors may remove or replace any Manager, at any time and from time to time, with or without cause, in its sole discretion, and Appgate Investors shall give written notice of such removal or replacement to the Board of Managers; provided that, Appgate Investors shall not remove or replace Medina so long as the Board Designation Conditions are satisfied.

(iv) The Managers shall serve without compensation unless otherwise determined by Appgate Investors.

(b) Board Authority and Action.

(i) Subject to receipt of the Required Member Consent with respect to the matters set forth in Section 4.03, the Board of Managers shall have the exclusive right to manage and Control the Company and the Company Business and the Board of Managers shall have the right to perform all actions necessary, convenient or incidental thereto, including, except as prohibited by the Act, the right to make any determination or grant any consent that would otherwise be makeable or grantable by a Member or class of Members pursuant to the Act. Except for the consent rights expressly set forth in Section 4.03, the Members (solely in their capacity as such and without affecting such Members' right to appoint Managers or such Managers' rights to manage and Control the Company and the Company Business) shall not participate in the Control, management, direction or operation of the activities or affairs of the Company or the Company Business and shall not have any authority or right to act for or bind the Company.

(ii) Each Member hereby consents to the exercise by the Board of Managers of the powers conferred upon the Board of Managers by this Agreement. Each Manager shall possess and may enjoy and exercise all of the rights and powers of a "manager" as provided in and under the Act, and each Manager shall be a "manager" for purposes of the Act; provided, however, that no individual Manager shall have the authority to act for or bind the Company without the requisite consent of the Board of Managers and, if required by Section 4.03, the Required Member Consent.

(iii) Any action, consent, approval, election, decision or determination to be made by the Board of Managers under or in connection with this Agreement (including any act by the Board of Managers within its "discretion" under this Agreement and the execution and delivery of any documents or agreements on behalf of the Company) shall be in the sole and absolute discretion of the majority vote of the then appointed Managers; provided, however, that at all times, the Majority Vote Manager shall hold, in the aggregate, a majority of the votes held by all then appointed Managers.

(iv) Meetings of the Board of Managers are expected to be held (A) in person, on a quarterly basis or (B) when called by a majority vote of the then appointed Managers

upon not less than 24 hours advance written notice to the other Managers. Attendance at any meeting of the Board of Managers shall constitute waiver of notice of such meeting. Any Manager may waive, in writing, his or her right to receive notice of a meeting, regardless of whether such written waiver is executed before or after the applicable meeting. The quorum for a meeting of the Board of Managers shall be the Managers holding a simple majority of the votes of the then appointed Managers and, in the event one or more Magnetar Manager is not present at such a meeting, the Majority Vote Manager may act in the stead of the absent Magnetar Manager. [For the avoidance of doubt, the presence of the Majority Vote Manager at a meeting shall be deemed to satisfy the requirement of quorum for such meeting.] Members of the Board of Managers may participate in any meeting of the Board of Managers by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. The Board of Managers shall conduct its business in such manner and by such procedures as a majority vote of the then appointed Managers deems appropriate.

(v) All actions taken by the Board of Managers shall be by a majority vote of the then appointed Managers. The Board of Managers may also take action without a meeting if such action is approved or ratified by written consent of the majority of the votes of the then appointed Magnetar Managers (and any Managers who do not execute such written consent shall receive prompt written notice after the execution of such written consent).

Section 4.02 Liability of the Members Generally. Except as expressly provided in this Agreement, including Section 5.08, or in the Act, no Member shall be liable for any debts, liabilities, contracts or obligations of the Company other than those expressly assumed by such Member pursuant to a definitive written binding agreement (other than this Agreement).

Section 4.03 Member Consent Rights.

(a) Notwithstanding Section 4.01, without the consent of Appgate Investors (the "Required Member Consent"), the Board of Managers shall not take any action listed on Exhibit 4.03 with respect to the Company or any other Appgate Entity, which consent may be requested by the Company to Appgate Investors and provided (if applicable) by Appgate Investors to the Company by email (without limiting any other form permitted by Section 4.03).

(b) Notwithstanding Section 4.01, the Company shall not enter into any transaction with any Magnetar Member or any of its Affiliates unless such transaction is approved by Class C Common Holders (other than the Magnetar Members) voting as a single class, holding a majority of the Units held by all Class C Common Holders (other than the Magnetar Members) (the "Affiliate Transaction Approval") unless such transaction is on an arms-length basis and consistent with terms that would have been negotiated with an independent third party. Notwithstanding the foregoing, all Members agree and acknowledge that (i) the Appgate Entities are authorized to pay the Company Expenses and the Board Expenses, as contemplated by Section 4.06, (ii) any transactions with any Magnetar Member expressly provided for or required by the terms of this Agreement shall be deemed approved by the Class C Common Holders' execution of this Agreement, including the issuance of any existing class of Securities or the creation and issuance of any new class of Securities to any Magnetar Member in accordance with Article III

and (iii) the Magnetar Member or any of its Affiliates may make secured or unsecured loans to the Company or any Appgate Entity or may guarantee any loan or debt of the Company or any Appgate Entity and any such loan under this Section 4.03(b) shall not increase the Magnetar Member's Capital Contribution or entitle the Magnetar Member to an increased share of distributions from the Company (other than in payment of interest on, or the principal balance of, the loan or other costs or charges pursuant thereto). Notwithstanding anything in Section 4.01 (A) Appgate Investors and its Affiliates have relationships with operating partners and industry partners (collectively, "Operating Partners") and certain Operating Partners are consultants to or provide services to certain portfolio companies of Appgate Investors and its Affiliates, one of which may be the Company and the Appgate Entities, and (B) the payment by the Company and/or the Appgate Entities to one or more Operating Partners (including through the reimbursement of Appgate Investors and its Affiliates for advancing payment to such Operating Partners) shall not require approval under this Section 4.03.[8]

Section 4.04 [Voting Rights. Except as provided in the Act or unless otherwise provided, and subject to Section 4.01(b)(i), Members shall not be entitled to any vote or consent right with respect to any Series A-1 Units, Class C-1 Common Units or Class C Profits Interests. With respect to all matters for which the Series A Members, Series B Members or Class C Common Holders have voting, consent or approval rights, either as provided by the Act or as expressly set forth in this Agreement, all Series A Members, Series B Members or Class C Common Holders, as applicable, shall be entitled to one vote for each Series A Unit, Series B Unit or Class C Common Unit, as applicable, held by such Series A Members, Series B Members or Class C Common Holders. The Series A Members, Series B Members or Class C Common Holders, as applicable, may also take action without a meeting if such action is approved or ratified by written consent of the majority of the votes of the then outstanding Series A Units, Series B Units or Class C Common Units, as applicable (and any Series A Members, Series B Members or Class C Common Holders, as applicable, who do not execute such written consent shall receive prompt written notice after the execution of such written consent).][9]

Section 4.05 Officers. The Board of Managers may, from time to time as it deems advisable, appoint officers of the Company (each, an "Officer") and assign in writing titles to any such Officer. Unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such Officer of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 4.05 may be revoked at any time, with or without cause, by the Board of Managers. Subject to Section 4.03, the Board of Managers is authorized to employ, engage and dismiss, on behalf of the Company, any Person, including an Affiliate of any Member, to perform services for, or furnish goods to, the

[8] Note to Draft: Under review.

[9] Note to Draft: Under review.

Company. Officers shall serve without compensation unless otherwise determined by the Magnetar Members.

Section 4.06 Expenses.

(a) If determined by the Board of Managers, the Company shall pay for, or cause any Appgate Entity to pay for, any and all expenses, costs and liabilities incurred in the conduct of the business of the Company and the Appgate Entities in accordance with the provisions hereof (collectively, "Company Expenses"), including by way of example and not limitation:

(i) all expenses incurred by the Company or any Appgate Entity in connection with any acquisitions and financings approved, whether prior to or following [●], 2024, by the Board of Managers;

(ii) all routine administrative and overhead expenses of the Company, including fees of auditors, attorneys and other professionals, expenses incurred by the Company Representative and expenses associated with the maintenance of books and records of the Company and communications with Members;

(iii) all expenses incurred in connection with any litigation involving the Company and the amount of any judgment or settlement paid in connection therewith;

(iv) all expenses for indemnity or contribution payable by the Company to any Person, whether payable under this Agreement or otherwise and whether payable in connection with any litigation involving the Company or any of its Subsidiaries, or otherwise;

(v) all expenses incurred in connection with any indebtedness of the Company;

(vi) all expenses incurred in connection with the dissolution and liquidation of the Company; and

(vii) all expenses incurred by the Magnetar Members on behalf of the Company or any Appgate Entity including any expenses incurred in (A) the performance of their duties or obligations to the Company or any Appgate Entity or (B) any operational support provided by the Magnetar Members and their representatives.

(b) The Company shall reimburse each Manager for any reasonable and documented costs and expenses incurred by such Manager in connection with attending any meetings of the Board of Managers or any committees thereof (collectively, the "Board Expenses").

Section 4.07 Indemnification; Exculpation; No Implied Duties.

(a) To the fullest extent permitted by applicable law, the Company shall and does hereby agree to indemnify and hold harmless and pay all judgments and claims against the

Board of Managers, each current or former Manager, each current or former director, officer or manager of, or legal representative, of an Appgate Entity, Appgate Investors, each current or former Magnetar Member (including Appgate Investors, in its role as Company Representative), Appgate Funding, LLC, any Affiliate thereof and their respective officers, directors, employees, equityholders, partners, managers, members and Affiliates (each, an "Indemnified Party", each of which shall be a third-party beneficiary of this Agreement solely for purposes of this Section 4.07), from and against any loss, liability, damage, fees or expenses (including costs and reasonable attorneys' fees) incurred by an Indemnified Party arising out of or in connection with any action taken or failed to be taken by such Indemnified Party with respect to the Company or the Appgate Entities except for (i) any action or failure to act that is not in good faith (provided that any such action taken or failed to be taken by the applicable Indemnified Party in reliance upon and in accordance with the opinion or advice of experts, including, legal counsel as to matters of law, accountants as to matters of accounting, or investment bankers or appraisers as to matters of valuation shall be deemed to be taken or failed to be taken in good faith), (ii) any action taken by such Indemnified Party purporting to bind the Company or the Appgate Entities that has not been authorized pursuant to this Agreement or by the Board of Managers, as appropriate, or (iii) any action taken by such Indemnified Party which constitutes willful misconduct, fraud or gross negligence. Expenses reasonably incurred by an Indemnified Party in defense or settlement of any claim that may be subject to indemnification pursuant to this Section 4.07(a) shall, in the discretion of the Board of Managers, be advanced by the Company prior to the final disposition of such claim. The satisfaction of any indemnification obligation pursuant to this Section 4.07(a) shall be from and limited to Company assets (including insurance and any agreements pursuant to which the Company, its officers or employees are entitled to indemnification) and no Member or Manager shall be subject to personal liability therefor. The Company may purchase and maintain insurance with respect to any liability which may be asserted against, or expense which may be incurred by, any such Person in connection with the Company's activities.

(b) To the fullest extent permitted by applicable law, no Indemnified Party shall be liable to the Company, the Members, the Managers or any Affiliate thereof or any of their respective officers, directors, employees, equityholders, partners, managers, members and Affiliates for any act or failure to act for which such Indemnified Party is entitled to indemnification pursuant to Section 4.07(a).

(c) Notwithstanding anything in this Agreement to the contrary, to the fullest extent permitted by applicable law, except for such Members who are employees [(which, for the avoidance of doubt, shall not include Medina so long as he is not an employee of the Company or any Appgate Entity)][10] of an Appgate Entity, each of the Company, the Managers and the Members, on behalf of themselves and their Affiliates and their respective officers, directors, employees, equityholders, partners, managers, members and Affiliates, hereby (i) agree and acknowledge that none of the Members or the Managers (or any Affiliate thereof or any of their respective officers, directors, employees, equityholders, partners, managers, members or

[10] Note to Draft: Subject to resolution of Medina employment status.

Affiliates) owe any duty (fiduciary or otherwise, at law or in equity) to the Company, the Managers, the Members or any Affiliate thereof or any of their respective officers, directors, employees, equityholders, partners, managers, members or Affiliates, other than the duty to act in good faith, (ii) disclaim any rights that any of them may have to any such duty, other than the duty to act in good faith, (iii) agree and acknowledge that none of the Members or the Managers (or any Affiliate thereof or any of their respective officers, directors, employees, equityholders, partners, managers, members or Affiliates) shall be liable to any of them with respect to any such duty, other than the duty to act in good faith, and that any such duty, other than the duty to act in good faith, is hereby expressly eliminated or waived pursuant to this Agreement and (iv) agree and acknowledge that no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement.

(d) Indemnitor of First Resort. The Company acknowledges that each of (x) the Magnetar Managers and (y) Medina has certain rights to indemnification, advancement of expenses and/or insurance provided by their employers and certain of their Affiliates (collectively, the "Magnetar Indemnitors" or "Medina Indemnitors", as the case may be). To the extent that the Company has an indemnity obligation hereunder, the Company shall (a) act as the indemnitor of first resort (i.e., its obligations to the Magnetar Managers or Medina, as the case may be, are primary and any obligation of the Magnetar Indemnitors or Medina, as the case may be, to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such directors are secondary), (b) be required to advance the full amount of expenses incurred by the Magnetar Managers or Medina, as the case may be, and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent not prohibited by (and not merely to the extent affirmatively permitted by) applicable law, but only as required by the terms of Section 4.07(a), without regard to any rights a Magnetar Manager or Medina, in his capacity as a Manager, as the case may be, may have against the Magnetar Indemnitors and (c) irrevocably waive, relinquish and release the Magnetar Indemnitors or the Medina Indemnitors, as the case may be, from any and all claims against the Magnetar Indemnitors or the Medina Indemnitors, as the case may be, for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Magnetar Indemnitors on behalf of a Magnetar Manager or the Medina Indemnitors on behalf of a Medina, in his capacity as a Manager, with respect to any claim for which such director has sought indemnification from the Company shall affect the foregoing, and the Magnetar Indemnitors and Medina Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of such director against the Company.

ARTICLE V

DISTRIBUTIONS

Section 5.01 Distributions Generally. The Members shall be entitled to receive distributions only when determined by the Board of Managers or as contemplated by Section 9.03 upon a dissolution of the Company, in each case, net of any Reserves and out of funds of the Company legally available therefor. Any such distributions shall be payable to the Members as of the applicable record date for such distribution, as determined by the Board of Managers. To the

extent that the Board of Managers determines that any distributions shall be made to the Members, such distributions shall be made in accordance with the provisions of this Article V.

Section 5.02 Priority of Distributions. Subject to Section 5.03, all distributions to the Members shall be made as follows:

(a) first, 100% to all Series A Members and Series A-1 Members, *pro rata* in proportion to the number of Series A Units and Series A-1 Units held by such Series A Members and Series A-1 Members relative to the aggregate Series A Units and Series A-1 Units outstanding until the Series A Units and Series A-1 Units have received, pursuant to this Section 5.02(a), distributions equal to $[111,239,156][11] in the aggregate;

(b) second, 100% to all Series B Members, *pro rata* in proportion to the number of Series B Units held by such Series B Members relative to the aggregate Series B Units outstanding until the Series B Units have received, pursuant to this Section 5.02(b), distributions equal to $[8,499,000][12] in the aggregate (the "Series B Threshold"); provided that upon payment in full of the Series B Threshold to the Series B Members, the Series B Units held by such Series B Members shall be deemed to be redeemed in full and automatically retired and shall not be entitled to any additional distribution hereunder;

(c) third, 100% to all Series A Members and Series A-1 Members, *pro rata* in proportion to the number of Series A Units and Series A-1 Units held by such Series A Members and Series A-1 Members relative to the aggregate Series A Units and Series A-1 Units outstanding until the Series A Units and Series A-1 Units have received, pursuant to this Section 5.02(c), distributions equal to $[10,238,029.82][13] in the aggregate (such amount *plus* $[111,239,156], the "Series A Threshold"); provided that upon payment in full of the Series A Threshold to the Series A Members and Series A-1 Members, the Series A Units and Series A-1 Units held by the Series A Members and Series A-1 Members shall be deemed to be redeemed in full and automatically retired and shall not be entitled to any additional distribution hereunder; and

(d) thereafter, to the Class C Holders *pro rata*, in proportion to the number of Class C Units held by such Members relative to the aggregate Class C Units outstanding;

provided, however, that (i) no Class C Profits Interest shall participate in any distributions (other than Tax Distributions) (and shall not be treated as outstanding for purposes of this Section 5.02) unless and until distributions from the Company to the Members from and after the issuance of such Class C Profits Interest pursuant to this Section 5.02 equal to the Participation Threshold for such Class C Profits Interest (subject to ratable adjustment by the Board of Managers to reflect

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[11] Note to Draft: To be Magnetar's funded debt, inclusive of the DIP. Will be updated based on actuals.

[12] Note to Draft: To be Appgate Funding's funded debt.

[13] Note to Draft: Amount included reflects PIK on notes through 5/7 and PIK on DIP for 45 days

security splits, security consolidations and other recapitalization events in order to allow the Class C Profits Interests to qualify as Profits Interests) and (ii) all distributions on Class C Profits Interest shall be subject to Section 5.03.

Section 5.03 Distributions on Account of Class C Profits Interests and Unvested Units.

(a) The Participation Threshold of each Class C Profits Interest shall be reduced (but not below zero) by any distribution made pursuant to Section 5.02 hereof after the date such Class C Profits Interest was issued. Notwithstanding anything in this Agreement to the contrary, other than Tax Distributions pursuant to Section 5.04(a) hereof, no distributions shall be made with respect to a Class C Profits Interest that has a positive Participation Threshold. If a portion of a distribution would cause a Class C Profits Interest's Participation Threshold to be reduced to zero, such Class C Profits Interest shall be entitled to distributions on the portion of such distribution after such Participation Threshold is reduced to zero. Distributions that are not made with respect to a Class C Profits Interest pursuant to this clause shall instead be distributed to the other Members pursuant to Section 5.02 hereof.

(b) Notwithstanding the distribution priority and entitlements set forth in Section 5.02, no distribution (other than Tax Distributions made in accordance with Section 5.04) shall be made to a Class C Holder with respect to the Class C Profits Interest held by such Class C Holder that have not vested pursuant to the terms of the applicable Class C Profits Interests Grant or applicable underlying incentive plan (such Class C Profits Interests an "Unvested Unit"). Any amount that would otherwise be distributed to a Class C Holder pursuant to Section 5.02 but for the application of the preceding sentence shall instead be retained by the Company and paid to such Class C Holder if, as and when the Unvested Unit to which such retained amount relates vests pursuant to the terms of the applicable Class C Profits Interests Grant or applicable underlying incentive plan. Items of income, gain, loss and deduction attributable to amounts retained by the Company pursuant to this Section 5.03 shall be allocated among the Class C Holders holding Unvested Units in a manner, determined in the Board of Managers' discretion, that equitably reflects each such Class C Holder's share of the amounts to which such items relate. If any Unvested Units are forfeited or repurchased pursuant to Section 8.08 or otherwise, amounts retained by the Company pursuant to this Section 5.03 on account of such Unvested Units shall be distributed in accordance with Section 5.02.

Section 5.04 Tax Distributions.

(a) Subject to any restrictions in any Credit Agreement, net of any Reserves, the Board of Managers shall use reasonable efforts to cause the Company to distribute to the Members, on a timely basis taking into consideration the due dates for estimated tax payments, an amount designed to assist the Members in satisfying their respective tax liabilities arising from allocations of Company income, gain, loss, deduction and credit to such Members (each, a "Tax Distribution").

(b) Tax Distributions made to the Members shall be made in the amount (without duplication) calculated pursuant to this Section 5.04(b). With respect to each Series A

Unit, Series A-1 Unit, Series B Unit, Class C Common Unit and Class C-1 Common Unit for any fiscal period, the amount of Tax Distributions shall equal the maximum amount per Series A Unit calculated with respect to any Series A Unit, Series A-1 Unit, Series B Unit, Class C Common Unit or Class C-1 Common Unit, as applicable, pursuant to the following formula (the "Tax Distribution Formula"): the product of (i) the Assumed Tax Rate and (ii) the net federal taxable income and gain, allocated to such Series A Unit, Series A-1 Unit or Series B Unit, as applicable, pursuant to Section 6.05 (without taking into account items allocated pursuant to Code Section 704(c) or Code Section 743 adjustments or any items of loss or deduction that may not be used to offset income and gain earned in the same tax period, e.g. as a result of Section 163(j) of the Code or any similar limitation on the ability to deduct an item of expense) for such period. For the avoidance of doubt, after computing the maximum Tax Distribution amount for any Series A Unit, Series A-1 Unit or Series B Unit, the Company will distribute the same amount per each Series A Unit, Series A-1 Unit and Series B Unit as a Tax Distribution. Tax Distributions for Class C Holders shall be calculated using the Tax Distribution Formula, but using the actual amounts calculated pursuant to the Tax Distribution Formula with respect to each Unit, rather than the maximum amount calculated with respect to all Class C Profits Interests.

(c) Tax Distributions shall be treated as an advance of, and shall therefore reduce, offset, apply against or be deemed advances on, amounts otherwise distributable to the Members pursuant to Section 5.02.

Section 5.05 [Reserved].

Section 5.06 Restricted Distributions. Notwithstanding anything to the contrary contained herein, the Company, and the Board of Managers on behalf of the Company, shall not make a distribution to any Member on account of its Units if such distribution would violate the Act or other applicable law.

Section 5.07 Tax Payments and Withholding Obligations. In the event that the Company is required to withhold or pay any taxes with respect to allocations or distributions to a Member, or an amount is deducted from payments or allocations to the Company, as a result of the status of any Member (or its direct or indirect owners), such payments or obligations shall be treated as follows:

(a) Payments to or by the Company. The Company is authorized to withhold from any payment made to, or any distributive share of, a Member, any taxes required by law to be withheld or paid by the Company, and in such event, such taxes withheld or paid by the Company, or deducted from any payment or allocation to the Company as a result of the status of any Member (or its direct or indirect owners) shall be treated as if an amount equal to such taxes had been paid to the Member rather than paid over to the taxing authority but shall be in fact paid by the Company to the taxing authority.

(b) Overpayment. Neither the Company nor the Board of Managers shall be liable for any excess taxes withheld or paid in respect of any Member's interest in the Company,

and, in the event of overwithholding or overpayment, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority.

(c) Certain Taxes Treated as Demand Loans. Taxes withheld or paid by the Company on behalf of a Member shall be treated as paid to such Member as a Tax Distribution and shall be taken into account for purposes of calculating such Member's rights to Tax Distributions under Section 5.04. To the extent of the excess of such amounts of taxes paid as set forth in Section 5.07(a), over the amounts otherwise distributable to a Member as a Tax Distribution in accordance with Section 5.04(b), the amount of such excess shall be treated as a demand loan payable by the Member to the Company with interest at the lesser of (i) the Prime Rate in effect from time to time plus 2%, compounded quarterly, and (ii) the highest rate per annum permitted by law. The Board of Managers may, in its discretion, either demand payment of the principal and accrued interest on such demand loan at any time, and enforce payment thereof by legal process, or may withhold from one or more distributions to a Member amounts sufficient to satisfy such Member's obligations under any such demand loan.

(d) Indemnity. In the event that the Company, the Board of Managers, any Member or any Affiliate thereof, becomes liable as a result of a failure to withhold or pay taxes in respect of any Member, then, notwithstanding anything in this Agreement to the contrary, such Member shall be liable for and shall indemnify and hold harmless the Company, the Board of Managers, any Member or any Affiliate thereof, as the case may be, in respect of all taxes, including interest and penalties, and any expenses incurred in any examination, determination, resolution and payment of such liability. The provisions contained in this Section 5.07 shall survive the termination of the Company and the withdrawal of any Member.

(e) Tax Audit Rules. Any payment made by the Company in connection with an audit governed by the Tax Audit Rules (in the absence of a valid election pursuant to Section 6226 of the Code) of a Tax Imputed Underpayment (together with any interest, additions to tax, penalties and fees and other costs and expenses directly associated therewith (such as lawyers' and accountants' fees)) shall be treated as a tax payment by the Company on behalf of the applicable Member(s) (as determined by the Company Representative subject to this Section 5.07).

Section 5.08 [Return of Distributions.

(a) If the Company incurs any Liability (as defined below), it may recall distributions previously made by the Company preceding the date of the incurrence of such Liability pursuant to this Agreement according to the amount that such Liability would have reduced the distributions received by the Members pursuant to this Agreement (whether pursuant to Section 5.02 or otherwise) had such Liability been incurred by the Company prior to the time such distributions were made (in each case, which recalled amounts shall be funded by the Members within ten (10) days after the date of any written request by the Company with respect thereto); provided that in no event shall (i) the recalled amount in respect of any Member exceed the aggregate amounts actually distributed to such Member or (ii) any Member be required to fund an amount in excess of its allocable portion of any such Liability to the extent resulting from any other Member's breach of its obligations under this Section 5.08(a).

(b) For purposes of this Section 5.08, "Liability" means any monetary liability or obligation to which the Company or any Manager (in connection with such position) becomes liable, including (i) the expenses of investigating, defending or handling any pending or threatened litigation or claim arising out of the Company's investments or activities, or any sale of any assets or property (including any equity interests of any Company Subsidiary), (ii) the amount of any judgment or settlement arising out of any such litigation or claim, (iii) any purchase price adjustment or similar payments that the Company or any Company Subsidiary may become liable to pay in connection with purchase and sale agreements or otherwise, including any amounts paid as settlements in respect of, or in the course of disputes in respect of, such payments and (iv) the Company's obligation to indemnify any Member, Manager or other Person pursuant to Section 4.07 or otherwise, but excluding, however, any matter for which a particular Member is required to provide indemnification pursuant to Section 5.07(d) or, with respect to any particular Member, any tax liability that is allocated to a different Member pursuant to Section 5.07(d).][14]

Section 5.09 Redemption; In-Kind Distributions. The Company may redeem all or a portion of any Member's interest in the Company in connection with a sale of all or substantially all of the Company's assets. If the Company distributes property in kind, the Company shall, if possible, distribute, or deem to distribute, to such Member the assets of the Company that such Member contributed, or as a successor in interest is considered to have contributed (consistent with Regulations Section 1.704-3(a)(7)), to the Company as a capital contribution ("Member Directly Contributed Assets"), and any assets that are treated as substituted basis property under section 1.704-3(a)(8)(i) of the Regulations as a result of having been received by the Company in an exchange or series of exchanges in which no gain or loss was recognized in exchange for any of the foregoing property as provided in Regulations Section 1.704-3(a)(8)(ii)("Substituted Basis Assets" and together with the Member Directly Contributed Assets, the "Member Contributed Assets"), in each case prioritizing that portion of Member Contributed Assets that constitute property subject to section 704(c) of the Code at the time of such distribution before other Member Contributed Assets, to the extent of any amounts due to such Member with respect to the Units held by such Member.

Section 5.10 [Equity Rollover. Notwithstanding anything to the contrary in this Agreement (including this Article V or Section 8.06), in connection with a transaction that would be a Control Sale or Asset Sale (whether or not consummated under Section 8.06 or not), the Company shall have the right, but not the obligation, to effect the exchange (each an "Equity Rollover") of all or a portion of one or more Member's Units for the number of Securities of the applicable Appgate Entity (based on the estimated value of such Securities as of the closing date of such transaction) which shall then be exchanged for the Securities of the buyer entity having equal value as of such closing date (the "Buyer's Equity"). In the event of any Equity Rollover, the consideration for the exchanged Member's Units shall be the Buyer's Equity plus the right to receive any post-closing distributions that would have been made to such Member's Units had they not been so exchanged. The Company shall have absolute discretion as to which Members

[14] Note to Draft: Under review.

shall be entitled to participate in the applicable Equity Rollover, the number of Units that each such Member is entitled to exchange in the Equity Rollover and the terms and conditions on which the Buyer's Equity shall be issued.][15]

ARTICLE VI

ALLOCATIONS

Section 6.01 General Application. Except as expressly provided in this Agreement, Net Income or Net Loss for a Fiscal Year or other relevant period shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Section 5.02 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Values, all Company liabilities were satisfied (limited in the case of each Nonrecourse Liability or Member Nonrecourse Debt to the Gross Asset Value of the assets securing such liability) and the net assets of the Company were distributed in accordance with Section 9.03(c) to the Members immediately after making such allocations, *minus* (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of the assets and the amount of any deficit balance in a Member's Capital Account that it otherwise would be obligated or deemed obligated to restore as a result of such hypothetical transactions; provided that, for purposes of the foregoing, any Class C Profits Interests shall be treated as fully vested.

Section 6.02 Loss Limitation. Notwithstanding anything to the contrary in Section 6.01, the amount of Net Loss allocated pursuant to Section 6.01 to any Member shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year or other relevant period, unless each Member would have an Adjusted Capital Account Deficit. All Net Loss in excess of the limitation set forth in this Section 6.02 shall be allocated first to Members who would not have an Adjusted Capital Account Deficit *pro rata* in proportion to their Capital Account balances, adjusted as provided in clauses (i) and (ii) of the definition of Adjusted Capital Account Deficit, until no Member would be entitled to any further allocation, and thereafter, to all Members *pro rata* in proportion to the number of Units held by such Members.

Section 6.03 Special Allocations.

(a) Minimum Gain Chargeback. Except as set forth in Regulations Section 1.704-2(f), if, during any Fiscal Year or other relevant period, there is a net decrease in Company Minimum Gain, each Member shall be specially allocated items of gross income and gain for such period (and, if necessary, subsequent periods) in an amount equal to that Member's share of the net decrease of Company Minimum Gain, computed in accordance with Regulations Section

[15] Note to Draft: To be confirmed.

1.704-2(g). Allocations of items of gross income and gain pursuant to this Section 6.03(a) shall be made as described in Regulations Sections 1.704-2(f) and (j). This Section 6.03(a) is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Regulations Section 1.704-2.

(b) Member Minimum Gain Chargeback. Except as set forth in Regulations Section 1.704-2(i)(4), if, during any Fiscal Year or other relevant period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, each Member with a share of that Member Nonrecourse Debt Minimum Gain as of the beginning of such period shall be specially allocated items of gross income and gain for such period (and, if necessary, subsequent periods) in an amount equal to that Member's share of the net decrease of Member Nonrecourse Debt Minimum Gain, computed in accordance with Regulations Section 1.704-2(i)(4). Allocations of items of gross income and gain pursuant to this Section 6.03(b) shall be made as described in Regulations Sections 1.704-2(i)(4) and (j). This Section 6.03(b) is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Regulations Section 1.704-2(i)(4) and related Regulations Sections.

(c) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which result in or increase an Adjusted Capital Account Deficit at the end of any Fiscal Year or other relevant period, then items of income and gain of the Company for that period shall be allocated to that Member in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible; provided that an allocation pursuant to this Section 6.03(c) will be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.03(c) were not in this Agreement. This Section 6.03(c) is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations Section 1.704-1(b)(2)(ii)(d).

(d) Gross Income Allocation. If a Member has or would have a deficit Capital Account balance at the end of any Fiscal Year or other allocation period that is in excess of the sum of (i) the amount such Member is then obligated to restore pursuant to this Agreement, and (ii) the amount such Member is then deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), respectively, such Member shall be specially allocated items of Company income and gain in an amount of such excess as quickly as possible, provided that any allocation under this Section 6.03(d) shall be made only if and to the extent that a Member would have a deficit Capital Account balance in excess of such sum after all allocations provided for in this Article VI have been tentatively made as if Section 6.03(c) and this Section 6.03(d) were not in this Agreement.

(e) Section 754 Adjustments. To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required by Regulations Section 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts as a result of a distribution in complete liquidation of a Member's Units, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases

the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Member or Members as required by such applicable Treasury Regulations.

(f) Nonrecourse Deductions. Nonrecourse Deductions for a Fiscal Year or other relevant period shall be specially allocated among the Members in the proportions determined appropriate by the Board of Managers in a manner designed, to the maximum extent permissible, to minimize the amount of taxable income recognized by the Members.

(g) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year or other relevant period shall be specially allocated to the Member or Members who bear the economic risk of loss with respect to the liability to which the Member Nonrecourse Deduction is attributable in accordance with Regulations Section 1.704- 2(i).

(h) Forfeiture Allocations. The Company is authorized to make allocations of income, gain, deduction or loss in accordance with Proposed Treasury Regulations Section 1.704-1(b)(4)(xii)(c) or any successor provision or guidance in connection with any forfeiture of Units by a service provider.

(i) Noncompensatory Options. Upon an exercise of a noncompensatory option to acquire an equity interest in the Company, the Company shall comply with the rules of Regulations Section 1.704-1(b)(2)(iv)(s).

(j) The allocations set forth in Sections 6.02 and 6.03(a) through (i) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article VI (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among Members so that, to the extent possible, the net amount of allocations of such other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not been made. Allocations pursuant to this Section 6.03(j) shall only be made to the extent that the Board of Managers determines that such allocations are necessary to be consistent with the economic agreement among the Members. Further, allocations pursuant to this Section 6.03(j) may be deferred with respect to allocations pursuant to Section 6.03(a), (b), (f) and (g) above to the extent that the Board of Managers determines that such allocations are likely to be offset by subsequent Regulatory Allocations.

(k) The allocation provisions of this Agreement are intended to comply with the Regulations promulgated under Section 704(b) of the Code. The Board of Managers shall have the authority to deviate from the allocation provisions of this Agreement, as determined necessary or appropriate by it, to comply with such Regulations.

Section 6.04 Transfer of Interest. In the event of a transfer of all or part of any Units (in accordance with the provisions of this Agreement) or the admission of an Additional Member or Substitute Member (in accordance with the provisions of this Agreement) the Company's taxable

year shall close with respect to the transferring Member, and such transferring Member's distributive share of all items of profits, losses and any other items of income, gain, loss or deduction shall be determined using the interim closing of the books method under Code Section 706 and Regulations Section 1.706-1(c)(2)(i). Except as otherwise provided in this Section 6.04, in all other cases in which it is necessary to determine the profits, losses, or any other items allocable to any period, profits, losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Code Section 706 and the Regulations thereunder.

Section 6.05 Tax Allocations.

(a) Sections 704(b) and 704(c) Allocations. Each item of income, gain, loss, deduction or credit for Federal income tax purposes that corresponds to an item of income, gain, loss or expense that is either taken into account in computing Net Income or Net Loss or is specially allocated pursuant to Section 6.03 (a "Book Item") shall be allocated among the Members in the same proportion as the corresponding Book Item; provided, however, that in the case of any Company asset the Gross Asset Value of which differs from its adjusted tax basis for Federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for Federal income tax purposes in accordance with the principles of Sections 704(b) and (c) of the Code, and the regulations promulgated thereunder, using any permissible method determined by the Company Representative, so as to take account of the difference between the Gross Asset Value and the adjusted tax basis of such asset.

(b) Credits. All tax credits shall be allocated among the Members as determined by the Board of Managers in its sole and absolute discretion, consistent with applicable law.

(c) Noncompensatory Options. If, as a result of an exercise of a noncompensatory option, a capital account reallocation is required under Regulations Section 1.704-1(b)(2)(iv)(s)(3), the Company Representative may make corrective allocations pursuant to Regulations Section 1.704-1(b)(4)(x).

(d) Capital Accounts. The tax allocations made pursuant to this Section 6.05 shall be solely for tax purposes and shall not affect any Member's Capital Account or share of non-tax allocations or distributions under this Agreement.

ARTICLE VII

ACCOUNTING AND TAX MATTERS

Section 7.01 Books and Records. At all times during the existence of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company, including the Company Register. Subject to reasonable confidentiality restrictions established by the Board of Managers (including as set forth in Section 18-305(c) of the Act) and compliance with Section 13.13, each Significant Member and its respective agents and representatives shall be afforded access to the Company's books and records applicable to such

Significant Member for any proper purpose (as determined by the Board of Managers in its reasonable discretion), at any reasonable time during regular business hours upon reasonable written notice to the Board of Managers.

Section 7.02 Reports to Members.

(a) Annual Reports. The Company shall prepare and deliver to each Manager, each Magnetar Member (other than any Magnetar Member who solely owns Series A-1 Unit or Class C-1 Common Units) and each Significant Member within 120 days (or as soon as practicable thereafter) following the end of each Fiscal Year, a copy of the Company's audited consolidated financial statements for such year, prepared in accordance with GAAP, and the accompanying audit report of the Company's independent accountants; provided, however, that in the event a Significant Member breaches any non-solicitation, non-competition, non-disclosure or similar restrictive covenant at any time, such Significant Member shall automatically forfeit, and shall be deemed to have automatically and irrevocably waived, all rights pursuant to this Section 7.02(a).

(b) Quarterly Reports. The Company shall prepare and deliver to each Manager, each Magnetar Member (other than any Magnetar Member who solely owns Series A-1 Unit or Class C-1 Common Units) and each Significant Member, within 45 days (or as soon as practicable thereafter) following the end of each Company fiscal quarter (other than the last quarter of any Fiscal Year), commencing with the first full quarter ending after the date hereof, a copy of the Company's consolidated unaudited financial statements for such quarter then ended; provided, however, that in the event a Significant Member breaches any non-solicitation, non-competition, non-disclosure or similar restrictive covenant at any time, such Significant Member shall automatically forfeit, and shall be deemed to have automatically and irrevocably waived, all rights pursuant to this Section 7.02(b).

(c) Other Information. The Company covenants and agrees to deliver to each Magnetar Member (other than any Magnetar Member who solely owns Series A-1 Unit or Class C-1 Common Units), with reasonable promptness, such other information and data, including any information necessary to assist any Magnetar Member or Appgate Funding, LLC in preserving its qualification as a "venture capital operating company" as defined in the regulations promulgated under the Employment Retirement Income Security Act of 1974 by the United States Department of Labor, with respect to the Company and each of its Subsidiaries, as from time to time may be reasonably requested by such Magnetar Member.

(d) Audit. The Company shall engage a reputable firm of independent certified public accountants to provide annual audit reports of the Company's consolidated financial statements, prepared in accordance with GAAP.

Section 7.03 Tax Returns.

(a) The Board of Managers, at the expense of the Company, shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company. As soon as reasonably possible after the end of each Fiscal Year, the Board of

Managers will cause to be delivered to each Person who was a Member at any time during such Fiscal Year, information with respect to the Company as may be necessary for the preparation of such Person's Federal, state and local income tax returns for such Fiscal Year.

(b) Following the Effective Date, each Member that contributed Contributed Claims to the Company shall use reasonable best efforts to provide the Company with such Member's estimated tax basis and holding period, each as of the Effective Date, in its Contributed Claim in writing and shall as soon as reasonably practicable provide the Company updated information if such Member later determines that its actual tax basis or holding period, as applicable, is different than previously reported.

Section 7.04 Tax Controversies.

(a) Appgate Investors is hereby designated the "Company Representative" of the Company and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings and to appoint such other person on behalf of the Company as may be required by the Tax Audit Rules to serve in a similar capacity (such as a "designated individual"). The Company Representative may exercise any authority granted to the "partnership representative" under the Code and Regulations. In particular, the Company Representative may, in its sole discretion, make any elections provided for under the Tax Audit Rules and may, in its sole discretion, settle and/or litigate any audit adjustments proposed by the Internal Revenue Service (or any state, local, or non-U.S. tax authority) in any partnership audit governed by the Tax Audit Rules. Notwithstanding anything to the contrary in this Agreement (including Article X), the Board of Managers is hereby authorized and empowered, without further vote or action of the Members, to amend this Agreement as necessary to comply with the requirements of any election under the Tax Audit Rules, and shall have the authority to execute any such amendment by and on behalf of each Member.

(b) The Company Representative may resign at any time permitted by the Tax Audit Rules. If Appgate Investors ceases to be the Company Representative for any reason, the Board of Managers shall appoint a new Company Representative taking into account the requirements of the Tax Audit Rules. Each Member agrees that any action taken by the Company Representative in connection with audits of the Company shall be binding upon such Members, and each such Member further agrees that such Member shall not treat any Company item inconsistently on such Member's income tax return with the treatment of the item on the Company's return and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company. Notwithstanding the preceding sentence, a Member is not bound by any action taken by the Company Representative in connection with audits of the Company if such action is not permitted by law.

(c) The Company Representative shall have the right to make on behalf of the Company any and all elections and take any and all actions that are available to be made or taken by the Company Representative or the Company under the Tax Audit Rules and the Members shall take such actions requested by the Company Representative consistent with any such elections

made and actions taken by the Company Representative. In the case of any adjustment by the Internal Revenue Service in the amount of any item of income, gain, loss, deduction, or credit of the Company or any Member's distributive share thereof ("IRS Adjustment"), the Company may pay an imputed underpayment as calculated under Section 6225(b) of the Code with respect to the IRS Adjustment, including interest and penalties ("Imputed Tax Underpayment") in the adjustment year or otherwise take the IRS Adjustment into account in the adjustment year. Each Member agrees to amend its U.S. federal income tax return(s) to include (or reduce) its allocable share of the Member's income (or losses) resulting from an IRS Adjustment and pay any tax due with such return as required under Section 6225(c)(2) of the Code even if an Imputed Tax Underpayment liability of the Company or IRS Adjustment occurs after the Member's withdrawal from the Company. Each Member agrees to indemnify and hold harmless the Company and Company Representative from and against any liability with respect to the Member's proportionate share of any Imputed Tax Underpayment or other IRS Adjustment resulting in liability of the Company, regardless of whether such Member is a Member in the Company in an adjustment year, and shall cooperate with the Company Representative in minimizing the amount of any such Imputed Tax Underpayment by supplying the Company Representative with such information concerning their tax classification as the Company Representative may reasonably request from time to time. The Company Representative shall in its sole discretion allocate the amount of any such imputed underpayment of taxes among the Members in a manner reasonably intended to reflect the nature of the income that is the subject of the adjustment giving rise to such imputed underpayment and the classification of the Members for Federal income tax purposes as corporations, individuals, or other types of taxpayers. These obligations shall survive a Member's ceasing to be a Member in the Company and/or the termination, dissolution, liquidation and winding up of the Company.

(d) The Company Representative may in its sole discretion elect under Section 6226 of the Code to cause the Company to issue adjusted IRS Schedule K-1 (or such other form as applicable) reflecting a Member's shares of any IRS Adjustment for the adjustment year as an alternative to the Company's payment of an Imputed Tax Underpayment for any tax year. If the Company Representative does so elect, each Member shall comply with the applicable requirements under subchapter C of chapter 63 of the Code.

(e) The Company shall fully reimburse the Company Representative for any and all costs and expenses incurred as a result of acting as the Company Representative. Except with the permission of the Company Representative, no Member shall take a position on any tax return or other filing with any tax authority (or court) with respect to an item of income, gain, loss, deduction or credit attributable to the Company that is in consistent with the Company's treatment of such item on its tax return or request an administrative adjustment under Section 6222(c) of the Code.

Section 7.05 Accounting Methods; Elections. The Board of Managers shall determine the accounting methods and conventions to be used in the preparation of the Company's tax returns and shall make any and all elections under the tax laws of the United States and any other relevant jurisdictions as to the treatment of items of income, gain, loss, deduction and credit of the

Company, or any other method or procedure related to the preparation of the Company's tax returns.

Section 7.06 Partnership Status. Except in connection with an Initial Public Offering, the Members intend, and the Company shall take no position inconsistent with such intent, to treat, the Company as a partnership for Federal, state and local income and franchise tax purposes. In furtherance of the foregoing, and except in connection with an Initial Public Offering, the Company shall neither elect, pursuant to Regulations Section 301.7701-3(c), to be treated as an entity other than a partnership nor elect, pursuant to Code Section 761(a), to be excluded from the provisions of subchapter K of the Code. To ensure that Units are not traded on an established securities market within the meaning of Regulations Section 1.7704-1(b) or readily tradable on a secondary market or the substantial equivalent thereof within the meaning of Regulations Section 1.7704-1(c), notwithstanding anything to the contrary contained herein and except in connection with an Initial Public Offering, (a) the Company shall not participate in the establishment of any such market or the inclusion of its Units thereon, and (b) the Company shall not recognize any Transfer made on any market by (i) redeeming the transferor Member (in the case of a redemption or repurchase by the Company) or (ii) admitting the transferee as a Member or otherwise recognizing any rights of the transferee, such as a right of the transferee to receive Company distributions (directly or indirectly) or to acquire an interest in the capital or profits of the Company.

ARTICLE VIII

TRANSFERS

Section 8.01 Transfer of a Member's Interest.

(a) Without the prior written consent of the Board of Managers and Appgate Investors, no Member may Transfer (including by Indirect Transfer) any of its Units, except for Transfers (i) in connection with a Control Sale pursuant to Section 8.06, (ii) in connection with a Tag Sale pursuant to Section 8.07 (provided that the applicable Tag Seller has obtained such prior written consent of the Board of Managers and Appgate Investors), (iii) in connection with a forfeiture of Class C Profits Interests or the exercise of a Purchase Option pursuant to Section 8.08 or the applicable Class C Profits Interests Grant or (iv) to a Permitted Transferee (provided that the Transfer to a Permitted Transferee complies with the applicable provisions of this Article VIII). In the event that the Board of Managers consents to a Transfer, such Transfer must comply with Section 8.07, as applicable.

(b) Class C Profits Interests may only be Transferred (i) in connection with a Control Sale pursuant to Section 8.06, (ii) in connection with a forfeiture of Class C Profits Interests or the exercise of a Purchase Option pursuant to Section 8.08 or the applicable Class C Profits Interests Grant or (iii) to a Permitted Transferee (provided that the Transfer to a Permitted Transferee complies with the applicable provisions of this Article VIII).

(c) As a condition to any Transfer to a Permitted Transferee permitted under this Agreement, (i) such Permitted Transferee shall covenant to the Company that it shall remain a Permitted Transferee of the transferor until the Company is dissolved pursuant to Section 9.01 and, if such Permitted Transferee ceases to be a Permitted Transferee, then such Permitted Transferee will Transfer its Units back to the Member from which it acquired such Units, (ii) such Permitted Transferee shall have agreed in writing to be bound by the terms of this Agreement (including Article XII) as an Additional Member and a Member and acknowledged that the applicable Units (and any other Units thereafter acquired by such Permitted Transferee) shall be bound by the terms of this Agreement and any Subscription Agreement by which the transferring Member is bound. A Member must give prior written notice to the Board of Managers of any proposed Transfer to a Permitted Transferee, including the identity of such proposed Permitted Transferee and such other documentation reasonably requested by the Board of Managers to ensure compliance with the terms of this Agreement. Any Permitted Transferee of a Management Member will hold the applicable Transferred Units as a Management Member for purposes of this Agreement and (iii) the Permitted Transferee has provided evidence (the "Withholding Tax Evidence") to the Company, satisfactory in the discretion of the Board of Managers, that it has satisfied any withholding tax required pursuant to applicable law (including establishing any exemption from such withholding tax) including Section 1446 of the Code and the Treasury Regulations promulgated thereunder.

(d) Notwithstanding anything to the contrary contained herein, no Member shall Transfer any of its Units at any time if such action (i) would cause the Company to be taxable as a "publicly traded partnership" under the Code (unless such Transfer is in connection with an Initial Public Offering), (ii) would constitute a violation of any Federal or state securities laws or a breach of the conditions to any exemption from registration of the Units under any such laws or a breach of any undertaking or agreement of a Member entered into pursuant to such laws or in connection with obtaining an exemption thereunder, and the Company shall not transfer upon its books any Units unless prior thereto the Company has received (or the Board of Managers has waived in writing the requirement that the Company receive) an opinion of counsel in form and substance reasonably satisfactory to the Company that such transaction is in compliance with this Section 8.01(d) or (iii) if a withholding tax is due with respect to such Transfer unless the transferee has provided to the Company the Withholding Tax Evidence.

(e) Notwithstanding anything to the contrary contained herein, in no event shall any Member Transfer any of its Units to any Person that is principally engaged in a business that is competitive with the Company, any of the Appgate Entities or any of their respective Subsidiaries, other than (i) with the prior written consent of Appgate Investors, (ii) in connection with a Control Sale effected pursuant to Section 8.06, or (iii) after an Initial Public Offering, pursuant to (A) a public offering and sale pursuant to an effective registration statement filed under the Securities Act or (B) a broker transaction pursuant to Rule 144 promulgated under the Securities Act.

(f) Each Member agrees, upon request of the Board of Managers, to execute such certificates or other documents and perform such acts as the Board of Managers reasonably deems appropriate to preserve the status of the Company as a limited liability company after the

completion of any Transfer of Units of such Member under the laws of the jurisdiction in which the Company is conducting its operations.

Section 8.02 Null and Void Transfers. Any purported Transfer of Units of any Member which is not in compliance with this Agreement shall be null and void and of no force and effect whatsoever. Furthermore, any distributions made with respect to such Units during any period of violation of this Agreement shall be held by the Company pending resolution of the ownership of such Units. In the event that any Member effects an Indirect Transfer of any Units that is not approved by the Board of Managers, the Company shall have the right, but not to the obligation, to repurchase any or all of such Member's Units for a purchase price equal to fifty percent (50%) of the lesser of (a) the Unreturned Capital Contributions for such Units and (b) the then Fair Market Value of such Units.

Section 8.03 Transferee's Capital Account. In the event any Units in the Company are Transferred in accordance with the terms of this Article VIII, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Units so transferred.

Section 8.04 Effective Date of Transfer; Distributions to Transferee. A Transfer of a Member's Units in accordance with the terms of this Article VIII shall be effective on the date the requirements of this Article VIII are satisfied, as determined by the Board of Managers (or at such earlier time as the Board of Managers determines). Until such effective date, the Board of Managers shall be entitled to treat the transferor of Units as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such effective time. Distributions with respect to such Transferred Units made after the effective date of such Transfer shall be made to the transferee.

Section 8.05 Bankruptcy or Death of a Member. The bankruptcy or death of a Member shall not cause a dissolution of the Company, but the rights of such Member to receive distributions and to Transfer its Units pursuant to this Article VIII shall, on the happening of such an event, devolve on its successor, administrator or other legal representative for the purpose of settling its estate or administering its property, subject to the terms and conditions of this Agreement, and the Company shall continue as a limited liability company. The successor or estate of such Member shall be liable for all the obligations of such bankrupt or deceased Member.

Section 8.06 Control Sale and Asset Sale.

(a) Notwithstanding anything to the contrary contained herein, if at any time (i) (A) the Magnetar Members propose to Transfer (whether by merger, direct sale of Securities, consolidation or otherwise) (1) all of the Class C Common Units and Class C-1 Common Units then held by the Magnetar Members, (2) Units or Securities constituting more than fifty percent (50%) of the then outstanding Series A Units and Series A-1 Units or Class C Units of the Company, (3) all of the direct or indirect equity interests of the Magnetar Members or the portion of the equity interests of the Magnetar Members that corresponds to more than fifty percent (50%) of the then outstanding Series A Units and Series A-1 Units or Class C Units of the Company, or (4) if elected in writing by the Magnetar Members to treat as a Magnetar Sale, more

than fifty percent (50%) of equity interests of any Appgate Entity (clauses (1) – (4), each a "Magnetar Sale"), or (B) the Board of Managers proposes to Transfer (whether by merger, direct sale of Securities, consolidation or otherwise) Units or Securities constituting more than fifty percent (50%) of the then outstanding Units of (x) the Company or (y) if elected by the Board of Managers to treat as a Control Sale, equity interests of any Appgate Entity (in each case of (A) or (B), a "Control Sale") or (ii) the Magnetar Members propose or the Board of Managers proposes a transaction in which (x) the Company or (y) if elected by the Magnetar Members or the Board of Managers, as applicable, to treat as an Asset Sale, any Appgate Entity sells or exclusively licenses all or substantially all of their respective assets (including all or substantially all of the equity interests of any Appgate Entity) (an "Asset Sale"), in each case of (i) or (ii), to a bona fide third party (which is not an Affiliate of the Company or any Magnetar Member) for consideration that consists of either cash or Securities in another Entity or a combination thereof, then the Magnetar Members or the Board of Managers, as applicable, shall have the right, but not the obligation, to provide written notice to all Members of the proposed Control Sale or Asset Sale (a "Drag-Along Notice"). The Drag-Along Notice shall set forth (i) the identity of the bona fide third party, (ii) the material terms and conditions of such proposed Control Sale or Asset Sale and (iii) the amount and type of consideration to be paid in such proposed Control Sale or Asset Sale.

(b) Notwithstanding anything to the contrary contained herein, each of the Company and the Members shall have the obligation to (i) participate (in accordance with this Section 8.06) in such proposed Control Sale or Asset Sale, (ii) vote in favor of, consent (including in writing) to and not object to the consummation of such proposed Control Sale or Asset Sale, (iii) waive any dissenters rights, appraisal rights or similar rights in respect of such proposed Control Sale or Asset Sale, (iv) if applicable, Transfer all of such Member's Units, on a *pro rata* basis relative to the number of Units (or equity interests of the Magnetar Members) being so Transferred by the Magnetar Members in such proposed Control Sale, to the bona fide third party on terms and conditions consistent with the Drag-Along Notice and (v) execute any and all agreements or documents and take any and all other actions necessary or appropriate to effectuate such proposed Control Sale or Asset Sale.

(c) The terms of such Control Sale or Asset Sale (i) shall provide that the distribution of proceeds from such Control Sale or Asset Sale shall be made in accordance with Section 5.02 of this Agreement at the times determined by the Board of Managers, (ii) shall not require any representations and warranties to be made directly by any Member except with respect to each Member, severally and not jointly, in respect of such Member's authority, ownership and ability to convey title to or vote such Member's Units ("Fundamental Representations") (provided that the terms of such Control Sale or Asset Sale may contemplate an escrow, set-off right, indemnity or similar arrangement for the purpose of indemnifying the bona fide third party with respect to claims for breaches of representations, warranties and covenants made by the Company, the Management Members (to the extent made on behalf of the Company) or any Appgate Entity), (iii) shall provide that any liability of each Member in respect of indemnifiable claims against the Company or any Appgate Entity shall be (A) several and not joint among all Members and (B) *pro rata* in proportion to, and capped at, the amount of consideration to be paid to such Member in connection with the Control Sale or Asset Sale (such proportion to be based on the consideration

to be distributed to such Member in accordance with Section 5.02(b) of this Agreement) (provided that the terms of such Control Sale or Asset Sale may contemplate an escrow, set-off right, indemnity or similar arrangement for the purpose of indemnifying the third party with respect to claims for breaches of representations, warranties and covenants made by the Company or any Appgate Entity) and (iv) may provide that any liability of a Member in respect of indemnifiable claim against such Member with respect to such Member's Fundamental Representations may be capped at the amount of consideration to be paid to such Member in connection with the Control Sale or Asset Sale (such proportion to be based on the consideration to be distributed to such Member in accordance with Section 5.02 of this Agreement), and shall be several and not joint with the other Members.

(d) [Reserved]

(e) Each Member (or other Persons receiving consideration pursuant to this Section 8.06) will bear its *pro rata* share (based upon the aggregate proceeds received by such Member or Person under Section 5.02) of the costs incurred by the Company in connection with any Control Sale or Asset Sale to the extent that such costs are incurred for the benefit of all Members and are not otherwise paid by the Company or the acquiring party, including any costs incurred following the consummation of any Control Sale or Asset Sale in respect of indemnification obligations, purchase price adjustments or other matters for which the Company or a Manager incurs costs for the benefit of all Members, as determined in the sole discretion of the Board of Managers. Costs incurred by any Member on his, her or its own behalf will not be considered costs of the applicable Control Sale or Asset Sale.

(f) In the event that any Person (other than the Magnetar Members or the Board of Managers) proposes any transaction that would constitute a Control Sale or Asset Sale if it had been proposed by the Magnetar Members or the Board of Managers in accordance with this Section 8.06, no Member shall participate in, propose, consent to, vote in favor of, support or take any similar action that is likely to result in or lead to the consummation of such transaction.

(g) Notwithstanding anything to the contrary contained herein, each of the Members irrevocably constitutes and appoints Appgate Investors or an Affiliate thereof designated by Appgate Investors as their agent, representative and attorney-in-fact with authority to act in connection with a Control Sale or Asset Sale to do any and all things and execute any and all documents, in each case, only to the extent required of such Member by this Section 8.06, if and only if such Member fails to take such act or do such thing in accordance with the terms of this Section 8.06 after notice required hereunder and a reasonable opportunity to cure.

(h) In order to secure each Member's obligation to vote his, her or its Units and other voting securities of the Company in accordance with the provisions of this Section 8.06, each Member hereby appoints Appgate Investors as such Member's true and lawful proxy and attorney-in-fact, with full power of substitution, to vote all such Member's Units and other voting securities of the Company and take all such actions and exercise all such other rights in all matters related to or arising out of the applicable Control Sale or Asset Sale only to the extent required of such Member by this Section 8.06. Appgate Investors may exercise the irrevocable proxy granted

to it hereunder at any time, if and only if such Member fails to take such act in accordance with the terms of this Section 8.06 after notice required hereunder and a reasonable opportunity to cure. The proxies and powers granted by each of the Members pursuant to this Section 8.06(h) are coupled with an interest and are a condition to the sale of Units to the Members under the Subscription Agreements, as applicable, or any other agreement entered into between the Company and the Members or relating to the sale or acquisition of Company equity securities. Such proxies and powers shall be irrevocable and shall survive the bankruptcy or dissolution of any Member, as applicable, and shall bind all subsequent holders of such Member's Units. The provisions of this Section 8.06(h) shall terminate upon the consummation of an Initial Public Offering.

(i) Notwithstanding anything to the contrary in this Agreement, in no event shall any Member or Manager participate in, propose, consent to, vote in favor of, support or take any similar action that is likely to result in or lead to the consummation of Control Sale or Asset Sale without the Required Member Consent.

(j) Notwithstanding anything contained in this Section 8.06, there shall be no liability on the part of any Magnetar Member to any other Member (other than the obligation to return any certificates and instruments evidencing Units and powers-of-attorney received by the Magnetar Member) if the Transfer of Units or Securities pursuant to this Section 8.06 is not consummated for any reason whatsoever. The decision to effect a Transfer of Units or Securities pursuant to this Section 8.06 by the Magnetar Member is in its sole and absolute discretion.

Section 8.07 Tag Sales. Other than a Transfer pursuant to a Control Sale or an Asset Sale, a Transfer pursuant to Section 8.09 or any Class C Profits Interests Grant or a Transfer to a Permitted Transferee, if any Class C Common Rights Holder (the "Tag Seller") desires to Transfer all or any part of such Class C Common Rights Holder's Class C Common Units or Class C-1 Common Units to a bona fide third party purchaser, or to the Company or any of its Subsidiaries (and such Transfer, a "Tag Sale"), with respect to such Class C Common Units, the Tag Seller shall provide written notice (the "Tag Notice") to the other Class C Common Rights Holders applicable, at least 20 days prior to the date of such proposed Tag Sale, which notice shall set forth the number of Class C Common Units or Class C-1 Common Units proposed to be transferred in the Tag Sale, the material terms of such Tag Sale (including the price per Class C Common Unit or Class C-1 Common Unit) and the identity of such bona fide third party purchaser or, if applicable, the fact that the Company, one of its Subsidiaries or another Member is the purchaser. The Tag Seller agrees that each other Class C Common Unit and Class C-1 Common Unit, as applicable, shall have the right to participate in such Tag Sale (the "Tag Along Rights") by delivering written notice of such Class C Common Rights Holder's intention to so participate within ten (10) days of receipt of the Tag Notice. In the event that one or more Class C Common Rights Holders exercise their respective Tag Along Rights, each of the Tag Seller and the Class C Common Rights Holders exercising their Tag Along Rights (each a "Tag Along Member") shall sell a *pro rata* portion of their respective Class C Common Units or Class C-1 Common Units to the bona fide third party purchaser, the Company or its Subsidiary or the other Members, as applicable, at the price per Class C Common Unit or Class C-1 Common Unit and on the other material terms set forth in the Tag Notice, such *pro rata* portion to be based on the proportion of

each Tag Seller's and Tag Along Member's respective Percentage Interests relative to the aggregate Percentage Interests of the Tag Seller and all Tag Along Members. The Tag Sale shall be consummated within five (5) days following the last date on which the Class C Common Rights Holder shall be entitled to exercise their Tag Along Rights under this Section 8.07. If any Tag Sale would constitute a Control Sale or an Asset Sale, then such Tag Sale shall be effected pursuant to and subject to the terms of Section 8.06 and this Section 8.07 shall have no force and effect with respect to such Tag Sale. In the event that the applicable Transfer is an Indirect Transfer, (i) the Tag Along Member shall have the option to Transfer either the applicable number of Class C Common Units or Class C-1 Common Units (calculated as if the applicable Transfer was not an Indirect Transfer) or the applicable equity interests of the Tag Along Member, in each case, subject to the terms and conditions of this Section 8.07 and (ii) all references to Class C Common Units or Class C-1 Common Units in this Section 8.07 shall be deemed to refer to the applicable equity interests of the Tag Seller and the Tag Along Member as the context requires. Notwithstanding anything contained in this Section 8.07, there shall be no liability on the part of the Magnetar Member to any other Member (other than the obligation to return any certificates and instruments evidencing Units and powers-of-attorney received by the Magnetar Member) if the Transfer of Units or Securities pursuant to this Section 8.07 is not consummated for any reason whatsoever.

Section 8.08 Forfeiture and Repurchase. [16]

(a) Forfeiture of Class C Profits Interests. Except as otherwise set forth in the MIP, an Individual Agreement, or a Class C Profits Interests Grant, if, at any time, a Management Member ceases to be employed by or provide services to, as applicable, the Company or any Appgate Entity for any reason, all unvested Class C Profits Interests held by such Management Member shall be forfeited, without consideration, on the date such Management Member's employment with or provision of services to, as applicable, the Company or any Appgate Entity terminates (a "Termination Date"). If, at any time, (i) a Management Member is terminated under circumstances constituting a Termination for Cause, (ii) a Management Member resigns from any Appgate Entity for any reason or (iii) a Management Member breaches any non-solicitation, non-competition, non-disclosure or similar restrictive covenant (at any time (whether before or after the Termination Date)), all vested Class C Profits Interests held by such Management Member or any of its Permitted Transferees shall be forfeited, without consideration, as of the Termination Date or the date of such breach, as applicable. Any Class C Profits Interests that are forfeited pursuant to the terms of this Agreement shall be cancelled by the Company and shall no longer be outstanding unless and until they are reissued by the Company.

(b) Purchase Price of Management Units. If, at any time, a Management Member ceases to be employed by or provide services to, as applicable, the Company or any Appgate Entity for any reason, any Management Units that are not forfeited under Section 8.08(a) and held by such Management Member or by any of such Management Member's Permitted Transferees will be subject to repurchase by the Company (the "Purchase Option") pursuant to the

[16] Note to Draft: Under review.

terms and conditions set forth in this Section 8.08, the MIP, and the Class C Profits Interest Grant. The purchase price of any such Management Units subject to the Purchase Option shall be as follows:

(i) If a Management Member is terminated by an Appgate Entity and such termination is not a Termination for Cause and such Management Member does not breach any non-solicitation, non-competition, non-disclosure or similar restrictive covenant at any time (whether before or after the Termination Date), then the purchase price for all vested Class C Profits Interests and all other Management Units shall be the Repurchase Fair Market Value of such Management Units (subject to adjustment pursuant to Section 8.08(e)) as of the Termination Date.

(ii) If (i) a Management Member is terminated under circumstances constituting a Termination for Cause, (ii) a Management Member resigns from any Appgate Entity for any reason or (iii) a Management Member breaches any non-solicitation, non-competition, non-disclosure or similar restrictive covenant (at any time (whether before or after the Termination Date)), the purchase price for all Management Units (other than those forfeited pursuant to Section 8.08(a)) shall be the lesser of (x) the Unreturned Capital Contributions for such Management Units and (y) the Repurchase Fair Market Value of such Management Units (subject to adjustment pursuant to Section 8.08(e)) as of the Termination Date or the date of such breach, as applicable.

(c) Purchase Notice. The Company may elect (which election shall be irrevocable) to purchase any or all of the Management Units that become subject to a Purchase Option by delivering written notice (the "Purchase Notice") to the holder or holders of such Management Units within 365 days after the Termination Date. The Purchase Notice will set forth the class and number of Management Units to be purchased from each holder, the aggregate consideration to be paid for such Management Units (calculated in accordance with Section 8.08(b)) and the time and place for the closing of the purchase. The number of Management Units to be purchased by the Company shall first be satisfied to the extent possible from the Management Units held by the Management Member at the time of delivery of the Purchase Notice. If the number of Management Units then held by the Management Member is less than the number of Management Units the Company has elected to purchase, the Company shall purchase the remaining Management Units elected to be purchased ratably from the Management Member's Permitted Transferees, in accordance with the number of Management Units held by such Permitted Transferees at the time of delivery of such Purchase Notice.

(d) Closing. The closing of the purchase of Management Units pursuant to the Purchase Option shall take place on the date designated by the Company in the Purchase Notice. The Company may pay for the Management Units to be purchased by it pursuant to the Purchase Option by (i) cash payable by delivery of a check or a wire transfer of funds, (ii) the cancellation of any indebtedness owed by the Management Member to the Company or (iii) a combination of (i) and (ii) above, as determined in the sole discretion of the Company. The purchasers of Management Units hereunder will be entitled to receive customary representations and warranties from the Management Member and/or its Permitted Transferees regarding such sale and ownership of the Management Units.

(e) Adjustment. All repurchases of Management Units pursuant to this Section 8.08 shall be subject to all applicable restrictions under law or contained in the Company's and its Subsidiaries' financing agreements. If any such restrictions prohibit the repurchase of Management Units hereunder which the Company is otherwise entitled to make, the Company shall promptly give written notice to the Management Member and his or her Permitted Transferees of such restriction, the Company's rights under this Section 8.08 shall be preserved and time periods governing such rights or obligations shall be tolled for the duration of such restriction and the Company may make such purchases as soon as (and to the extent that) it is permitted to do so by law and such financing agreements; provided, that the purchase price of any Management Units required to be purchased at the Repurchase Fair Market Value pursuant to this Section 8.08 and not purchased as a result of any restrictions contemplated hereby, shall be the Repurchase Fair Market Value of such Management Units as of the date on which the Management Member first ceases to be employed by or provide services to the Company or any Appgate Entity. The Company may assign its rights under this Section 8.08 to any Appgate Entity, and, to the extent that the Company is prohibited by law or by its or any Appgate Entity's financing agreements from repurchasing any Management Units subject to the Purchase Option, the Company may assign its right to exercise the Purchase Option with respect to such Management Units to any Magnetar Member.

Section 8.09 Written Notice of Transfer. In connection with any Transfer, including a Transfer under Section 8.01(a), the transferee, at the request of the Board of Managers, shall provide the Company, within 30 days after such Transfer (or, in the case of a transferee that acquires Units on the death of a Member, within one year of such death), with the written notice described in Section 3 of Notice 2005-32, 2005-16 I.R.B. 895 (or any successor regulation or administrative pronouncement).

Section 8.10 Restrictive Covenants. [17]

(a) Agreement Not to Compete. Each Management Member acknowledges and agrees that he, she or it will continue to acquire significant knowledge and information concerning the business of the Appgate Entities (collectively, the "Protected Entities"), and that such business is very competitive. Each Management Member acknowledges and agrees that the Protected Entities are doing business within the Covered Area. Each Management Member further acknowledges that competition by such Management Member with the Protected Entities within the Covered Area would severely injure the Protected Entities. Accordingly, each Management Member agrees that in exchange for such Management Member being allowed to invest in the Company and become an equity owner of the Company and for other benefits received by such Management Member under this Agreement and other agreements with the Company, the legal sufficiency of which is not disputed by the Management Member or the Company, such Management Member agrees and covenants that during the period (collectively, (i) and (ii) shall be the "Restricted Period") (i) while such Management Member owns an equity interest in the

[17] Note to Draft: Under review.

Company, such Management Member will not take any action that is inconsistent with a duty of loyalty to the Company, including providing information about the Company's business or operations to any competitor or potential competitor of the Company or assisting any competitor or potential competitor of the Company in soliciting any Covered Business (as defined below) within the Covered Area (as defined below) and (ii) for a period of twelve (12) months after the earlier of (A) such Management Member ceasing to own an equity interest in the Company or (B) if applicable, the date upon which the Company first has the right to exercise its Purchase Option, such Management Member will not, without the written consent of each of the Protected Entities, compete with the business of the Protected Entities by engaging, directly or indirectly, in the Covered Business within the Covered Area.

(b) For purposes of this Agreement:

(i) The term "Covered Business" means any business in which any Protected Entities, at any time during the Restricted Period, engaged, including the business of [●][18];

(ii) The phrase "engaging, directly or indirectly" means engaging or having an interest in, directly or indirectly, as owner, partner, participant of a joint venture, trustee, proprietor, shareholder, member, manager, director, officer, employee, independent contractor, capital investor, lender, consultant, advisor or similar capacity, or by lending his, her or its name or reputation to be used in connection with, or otherwise participating in or making available his, her or its skill, knowledge or experience to be used in connection with, the operation, management or control of a division, group, or other portion of a business or enterprise engaged in any aspect of the Covered Business;

(iii) The phrase "within the Covered Area" is defined to include those various states within, and territories of, the United States and in each other country where the Protected Entities perform the Covered Business on the date hereof and such additional states, territories and countries where the Protected Entities perform the Covered Business during the Restricted Period, and is further defined to include the sale, marketing or distribution to a person or entity in or within, or for resale within, the Covered Area even if the services or sales were performed or originated in another state, territory, jurisdiction or country.

(c) Non-Solicitation.

(i) During the Restricted Period, each Management Member agrees not to (A) induce or attempt to induce any person or entity that is a customer (or Affiliate thereof) or supplier (or Affiliate thereof) of any of the Protected Entities ("Customers or Suppliers") to refrain from or cease doing business with any of the Protected Entities, or (B) interfere with, disrupt or

[18] Note to Draft: Under review.

attempt to disrupt the relationship, contractual or otherwise, between any of the Protected Entities and any Customers or Suppliers.

(ii) During the Restricted Period, each Management Member agrees not to (A) induce, encourage or otherwise solicit any current or former employee or independent contractor of any of the Protected Entities to terminate his, her or its employment relationship or contract with any of the Protected Entities or to accept any other employment or position, or (B) assist any other entity in hiring any such employee or independent contractor.

(d) Permitted Activities. Nothing contained herein shall limit the right of the Management Members as investors to hold and make passive investments in securities of any corporation, limited partnership or other entity that are listed on a national or regional securities exchange or admitted to trading privileges thereon, traded on the Nasdaq National Market System, or have been registered under Section 12 of the Securities Exchange Act of 1934, provided each Management Member's equity interest therein does not exceed two percent (2%) of the outstanding shares or interests in such corporation, partnership or other entity.

(e) Remedies. The Protected Entities and each Member shall be entitled to enforce the agreements and covenants of the Management Members set forth in this Section 8.10. Each Management Member expressly acknowledges that his, her or its breach of any of the covenants and undertakings of this Section 8.10 will result in irreparable injury to the Protected Entities and the other Members and that money damages will not adequately compensate the Protected Entities and other Members for such breach. Therefore, each Management Member agrees that the Protected Entities and other Members shall be entitled, if they so elect, to institute and prosecute proceedings in any court of competent jurisdiction not only to obtain damages for any breach of the covenants and undertakings set forth in this Section 8.10, but also to enforce the specific performance of this Agreement by the offending Management Member and to enjoin such Management Member from activities in violation of this Agreement. If any legal action or other proceeding is brought for the enforcement of the provisions of this Section 8.10, or because of an alleged dispute, breach, default or misrepresentation in connection with the provisions of this Section 8.10, the prevailing party shall be entitled to recover reasonable attorney fees as well as court costs and all expenses not taxable as court costs. Such remedy shall include all such fees, costs and expenses incident to appeal.

(f) The Management Members, Protected Entities and each other Member further acknowledge that the time, scope, geographic area and other provisions of this Section 8.10 have been specifically negotiated by sophisticated commercial parties and agree that they consider the restrictions and covenants contained in this Section 8.10 to be reasonable and necessary for the protection of the interests of the Protected Entities, but if any such restriction or covenant shall be held by any court of competent jurisdiction to be void but would be valid if deleted in part or reduced in application, such restriction or covenant shall apply in such jurisdiction with such minimal modification or, if necessary, deletion as may be necessary to make it valid and enforceable. The restrictions and covenants contained in each paragraph of this Section 8.10 shall be construed as separate and individual restrictions and covenants and shall each be capable of

being reduced in application or severed without prejudice to the other restrictions and covenants or to the remaining provisions of this Agreement.

ARTICLE IX

DISSOLUTION; LIQUIDATION

Section 9.01 Dissolution. The Company shall be dissolved and its affairs wound up on the first to occur of any of the following events:

(a) the decision of the Board of Managers to dissolve the Company and receipt of the Required Member Consent, if applicable; or

(b) any other event sufficient under the Act (except action of the Board of Managers or the Members) to cause the dissolution of the Company.

Section 9.02 Final Accounting. Upon the dissolution of the Company, a proper accounting shall be made from the date of the last previous accounting to the date of dissolution.

Section 9.03 Liquidation.

(a) Dissolution of the Company shall be effective as of the date on which the event occurs giving rise to the dissolution and all Members shall be given prompt notice thereof in accordance with Section 13.17, but the Company shall not terminate until the assets of the Company have been distributed as provided for in Section 9.03(c). Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business, assets and affairs of the Company shall continue to be governed by this Agreement.

(b) Upon the dissolution of the Company, the Board of Managers or, if there is no Board of Managers, a Person selected by the Magnetar Members, shall act as the liquidator (the "Liquidator") of the Company to wind up the Company. The Liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(c) The Liquidator shall distribute all proceeds from liquidation in the following order of priority:

(i) first, to creditors of the Company (including creditors who are Members) in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision or Reserve for payment thereof);

(ii) second, to the setting up of reserves which the Liquidator deems reasonably necessary for absolute and contingent liabilities of the Company; and

(iii) third, to the Members in the same manner in which non-liquidating distributions are made pursuant to Section 5.02.

(d) The Liquidator shall determine whether any assets of the Company shall be liquidated through sale or shall be distributed in kind. A distribution in kind of an asset to a Member shall be considered, for the purposes of this Article IX, a distribution in an amount equal to the fair market value of the assets so distributed as determined by the Liquidator in its sole and absolute discretion.

Section 9.04 Cancellation of Certificate. Upon the completion of the distribution of Company assets as provided in Section 9.03, the Company shall be terminated and the Person acting as Liquidator shall cause the cancellation of the Certificate and shall take such other actions as may be necessary or appropriate to terminate the Company.

Section 9.05 Post-Liquidation Matters. Notwithstanding anything to the contrary herein, all indemnities, exculpations and reimbursement obligations made pursuant to this Agreement (including Section 5.08) shall survive dissolution and liquidation of the Company until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified, exculpated or reimbursed, as the case may be. [If the Company is liquidated and dissolved, each distributee Member hereby assumes its obligations for all indemnities, exculpations and reimbursement obligations pursuant to this Agreement (including Section 5.08) until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified, exculpated or reimbursed, as the case may be; provided, however, that no such distributee Member shall be obligated to pay any amount to the Company pursuant to this Section 9.05 in excess of the aggregate amount of distributions actually received by such Member in accordance with this Agreement.][19]

ARTICLE X

AMENDMENTS

Section 10.01 Amendments. Subject to Sections 10.02 and 10.03, this Agreement may be modified, amended or any provision hereof waived from time to time as determined by the Board of Managers and with the prior written consent of Appgate Investors.

Section 10.02 Amendments by the Board of Managers. Without limiting the generality of Section 10.01, the Board of Managers, without the consent or approval at any time of any Member (each Member, by acquiring its Units, being deemed to consent to any such amendment) other than the Required Member Consent, may amend any provision of this Agreement or the Certificate, and may execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection therewith, to reflect:

[19] Note to Draft: Under review.

(a) a change in the name of the Company or the location of the principal place of business of the Company;

(b) the admission, substitution, termination or withdrawal of any Member in accordance with the provisions of this Agreement;

(c) a change that is necessary to qualify the Company as a limited liability company or an Entity in which the Members have limited liability;

(d) the creation a new class or series of Equity Security and the issuance of any class or series of Equity Securities, in each case, in accordance with this Agreement (including any amendment to Section 5.02 in connection therewith);

(e) a change that is:

(i) of an inconsequential nature and does not adversely affect any Member in any material respect;

(ii) necessary or desirable to cure any ambiguity or to correct or supplement any provisions of this Agreement;

(iii) required or specifically contemplated by this Agreement; or

(iv) necessary to reflect the current Capital Contributions and number of Units held by each Member on Schedule I and the Company Register, following any change to such items in accordance with the provisions of this Agreement; or

(f) a change in any provision of this Agreement which requires any action to be taken by or on behalf of the Board of Managers or the Company pursuant to the requirements of the Act or any other applicable law if the provisions of applicable law are amended, modified or revoked so that the taking of such action is no longer required. The authority set forth in this Section 10.02(f) shall specifically include the authority to make such amendments to this Agreement and to the Certificate as the Board of Managers deems necessary or desirable in the event that the Act or any other applicable law is amended or eliminated or changes any provision now in effect.

Section 10.03 [Certain Amendments. Notwithstanding Section 10.01 or Section 10.02, this Agreement may not be altered, changed or amended in any manner that would have a disproportionate material and adverse impact on one or more Class C Common Holder (each, an "Affected Member"), relative to all other Class C Common Holder, unless Affected Members holding a majority of the Class C Common Units held by all Affected Members provide their consent to such alteration, change or amendment; provided, that the provisions of Section 4.01(a)(i)(B) and Section 4.01(a)(iii) and the definition of "Significant Member" and any rights afforded thereto insofar as they adversely impact Medina may not be amended, modified, terminated or waived without the written consent of Medina; provided, further, that notwithstanding the foregoing or anything to the contrary in this Agreement, in no event shall the

issuance of additional Series A Units, Series A-1 Units, Series B Units, Class C Common Units, Class C-1 Common Units or the creation or issuance of any new class or series of Equity Security (or any amendment to this Agreement, including any amendment to Section 5.02, in connection therewith), in each case in accordance with this Agreement be deemed to have a disproportionate adverse impact on any Class C Common Holder or require any consent under this Section 10.03.][20]

ARTICLE XI

PUBLIC OFFERINGS

Section 11.01 Initial Public Offering. Notwithstanding anything to the contrary contained herein, in connection with an Initial Public Offering, and upon the request of the Board of Managers, each of the Members hereby agrees that it will, at the expense of the Company, take such action and execute such documents as may reasonably be necessary to effect such Initial Public Offering, including taking all such actions and executing such documents as may be reasonably necessary to convert the Company into a corporation or to contribute its respective Units to a newly formed corporation and executing a customary lock-up agreement with respect to such Units or common stock in such corporation (not to exceed 180 days in duration and subject to all officers, directors and 1% holders being similarly bound and the *pro rata* application of any discretionary waivers), in each case substantially concurrently with the closing of the Initial Public Offering. In connection with any such conversion or contribution, the Members shall be entitled to receive that value of common stock of the corporation whose shares of common stock are being sold in connection with such Initial Public Offering that equals the value such Member would be entitled to receive, relative to the Units which such Member held in the Company immediately prior to such conversion or contribution, as calculated under Section 9.03 if a liquidation of the Company had occurred immediately prior to the consummation of such Initial Public Offering with the proceeds in such liquidation being equal in amount to the implied aggregate equity valuation of the Company immediately prior to the consummation of such Initial Public Offering.

Section 11.02 Registration Rights.

(a) After the Initial Public Offering, the Magnetar Members shall have the right to cause the Company, at the Company's expense, to register any of the Securities (including the Units or shares of common stock into which Units may be converted or for which Units may be contributed, in each case, as contemplated by Section 11.01) then held by any of the Magnetar Members under the Securities Act for sale to the public (the "Magnetar Demand Right").

(b) If (i) the Company at any time proposes to register any of its Securities (including the Units or shares of common stock into which Units may be converted or for which Units may be contributed, in each case, as contemplated by Section 11.01) under the Securities Act for sale to the public (whether for its own account or for the account of any of the Members

[20] Note to Draft: Under review.

or other Security holders or both) or (ii) the Magnetar Members exercise the Magnetar Demand Right (in each case of (i) or (ii), except with respect to registration statements on Form S-4 or any comparable or successor form in connection with any acquisition of any Entity or business by the Company or any Appgate Entity, Form S-8 or any comparable or successor form in connection with shares issuable pursuant to option or employee benefit plans or any other form not available for registering securities of the Company for sale to the public), the Company shall give written notice thereof to all Significant Members (each a "Public Offering Notice"). Upon the written request of any Significant Member, received by the Board of Managers within fifteen (15) days after delivery of the applicable Public Offering Notice, to register any of its Securities (including the Units or shares of common stock into which Units may be converted or for which Units may be contributed, in each case, as contemplated by Section 11.01) (the "Registrable Securities"), the Company will use its commercially reasonable efforts to cause the Registrable Securities of such Significant Member as to which registration shall have been so requested to be included in the Securities to be registered under or covered by the registration statement proposed to be filed by the Company (including in connection with the exercise of the Magnetar Demand Right). Such inclusion of a Significant Member's Registrable Securities shall be conditioned upon such Significant Member providing the Company with information regarding such Significant Member, the Registrable Securities held by such Significant Member and such Significant Member's proposed plan of distribution of such Registrable Securities as promptly as requested by the Company.

(c) In the event that any registration pursuant to this Section 11.02 shall be, in whole or in part, an underwritten public offering, any Series A Member or Series A-1 Member requesting inclusion of any of its Registrable Securities in the applicable registration statement shall be required to execute a customary underwriting agreement as a condition to such inclusion. If the managing underwriter or the Company shall be of the opinion that the inclusion of Registrable Securities by any Series A Member(s) or Series A-1 Member(s) (other than the Magnetar Members in the event of an exercise of a Magnetar Demand Right) would adversely affect the marketing of the securities to be sold by the Company in the offering (or by the Magnetar Members in the event of an exercise of a Magnetar Demand Right), then the number of such Series A Members' or Series A-1 Members' Registrable Securities to be included in the applicable offering may be reduced *pro rata* among the requesting Series A Members and Series A-1 Members based upon the number of Registrable Securities owned by all such Series A Members and Series A-1 Members.

(d) The Company shall not grant any registration rights to any other Member or other Equity Security that would impair or limit the rights of the holders of Registrable Securities hereunder or that would be substantially more favorable to such other holder than the rights granted hereunder.

(e) The Company shall cause the obligations under this Section 11.02 to be assumed by the issuer of the Registrable Securities upon any dissolution, liquidation or winding up of the Company or the conversion of the Company into a corporation, in each case, in connection with an Initial Public Offering.

ARTICLE XII

REPRESENTATIONS

Section 12.01 Investment Purpose. Each Member hereby, severally and not jointly, represents and warrants to the Company, the Board of Managers and each other Member that such Member (a) is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act, (b) has acquired its Units for itself for investment purposes only, and not with a view to any resale or distribution of such Units, (c) has been advised and understands that such Units have not been and shall not be registered under the Securities Act or any applicable state securities laws and, therefore, cannot be resold unless such Units are registered under the Securities Act and all applicable state securities laws or unless there are exemptions from registration available under the Securities Act and any and all applicable state securities laws with respect to the resale of such Units, and (d) has, either alone or with its "purchaser representatives" as that term is defined in Rule 501(h) under the Securities Act, such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company. Each Member further, severally and not jointly, acknowledges that the Company has made available to such Member, at a reasonable time prior to its acquisition of its Units, the opportunity to ask questions and receive answers concerning the terms and conditions of such acquisition and to obtain any additional information which the Company possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of the information furnished by the Company in connection with such acquisition. Each Member further, severally and not jointly, represents and warrants to the Company and each other Member that, as of the signing of this Agreement (w) if such Member is not a natural person, it is duly organized, validly existing and in good standing under the laws of the jurisdiction where it purports to be organized, (x) it has full power and authority to enter into and perform its obligations under this Agreement and all actions, consents and approvals necessary to authorize such Member's execution and delivery of this Agreement, and the performance of obligations under it, have been duly taken and obtained, (y) this Agreement has been duly executed and delivered by a duly authorized officer or other representative of such Member (if such Member is not a natural person) and constitutes the legal, valid and binding obligation of such Member enforceable in accordance with its terms (except as such enforceability may be affected by applicable bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and except that the availability of equitable remedies is subject to judicial discretion) and (z) the signing, delivery and performance of this Agreement does not violate the organizational documents of such Member (if such Member is not a natural person) or any material agreement to which such Member is a party or by which it is bound. The representations and warranties in this Section 12.01 are in addition to, and not in lieu of, any representations and warranties made by the applicable Member in his, her or its Subscription Agreements or Class C Profits Interests.

Section 12.02 Independent Inquiry. Each Member, severally and not jointly, acknowledges, agrees, represents and warrants that it has completed its own independent inquiry and has relied fully upon the advice of its own legal counsel, accountant, financial and other advisors in determining the legal, tax, financial and other consequences of this Agreement and the

transactions contemplated hereby and the suitability of this Agreement and the transactions contemplated hereby for such Member and its particular circumstances and has not relied upon any representations (except for those expressly set forth in such Member's Subscription Agreement) or advice by the Company, any other Member or the Board of Managers. Without limiting the generality of the foregoing, each Member, severally and not jointly, acknowledges, agrees, represents and warrants that (a) it has completed its own independent inquiry as to the investment risks associated with its respective Units, and (b) any projections or assumptions as to potential returns that have previously been submitted to such Member by the Company, the Board of Managers, any other Member or any other person affiliated with the Company, the Board of Managers or any other Member are not guarantees of actual returns. Each Member acknowledges that (A) none of the Company, its Affiliates or any other Person has made any representation or warranty, express or implied, as to the Company or any Affiliate thereof or the accuracy or completeness of any information regarding the Company and the Company Subsidiaries furnished or made available to such Member or its, his or her Affiliates and representatives, in each case, except for those expressly set forth in such Member's Subscription Agreement, (B) such Member has not relied on any representation or warranty from the Company, any Company Subsidiary or any other Person in determining to enter into this Agreement, in each case, except for those expressly set forth in such Member's Subscription Agreement, and (C) none of the Company or any other Person has any obligation to disclose any information regarding the Company or the Company Subsidiaries, in each case, except for those expressly set forth in such Member's Subscription Agreement. Without limiting the generality of the foregoing, each Member acknowledges that none of the Company or any other Person has made any representation or warranty, express or implied, as to the financial projections, forecasts, cost estimates and other predictions relating to the Company and the Company Subsidiaries delivered or made available to such Member or as to the probable success or profitability of the Company or the Company Subsidiaries.

Section 12.03 Indemnification for False Representations. The representations and warranties in this Article XII shall survive the execution of this Agreement. Each Member understands that any Person who suffers damage as a result of a false representation may have a claim against such Member for damages. Each Member agrees to indemnify and hold harmless the Company and the other Members from and against all damages, losses, costs and expenses (including reasonable attorneys' fees) which they or any of them may incur by reason of the Member's false representation made by such Member in this Article XII.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.01 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. This Agreement, and any matter or dispute arising out of or related to this Agreement, shall be construed by, subject to and governed in accordance with the internal laws of the State of Delaware without giving effect to conflict of laws or other principles which may result in the application of laws other than the internal laws of the State of Delaware. Each of the parties hereto irrevocably agrees that any legal action or proceeding arising out of this Agreement or otherwise relating to any of

the Company's constitutive documents shall be brought only in the state or United States Federal courts located in the State of Delaware. Each party hereto irrevocably consents to the service of process outside the territorial jurisdiction of such courts in any such action or proceeding by the mailing of such documents by registered United States mail, postage prepaid, if to the Company, to the address of its principal place of business, and if to any Member, in accordance with Section 13.17. Each party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement, any agreement entered into in connection with this Agreement or any transaction contemplated hereby or thereby. Each party (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section 13.01.

Section 13.02 Counterparts. This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

Section 13.03 Construction; Headings. Whenever the feminine, masculine, neuter, singular or plural shall be used in this Agreement, such construction shall be given to such words or phrases as shall impart to this Agreement a construction consistent with the interests of the Members entering into this Agreement. Where used herein, the term "Federal" shall refer to the U.S. Federal government. As used herein, (a) "or" shall mean "and/or" and (b) "including" or "include" shall mean "including, without limitation". The headings and captions herein are inserted for convenience of reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof. It is the intention of the parties that every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (notwithstanding any rule of law requiring an Agreement to be strictly construed against the drafting party), it being understood that the parties to this Agreement are sophisticated and have had adequate opportunity and means to retain counsel to represent their interests and to otherwise negotiate the provisions of this Agreement. To the extent that any ambiguity or inconsistency arises with respect to any provision(s) of this Agreement, the Board of Managers shall resolve such ambiguity or inconsistency in good faith and such resolution shall be binding upon the Members.

Section 13.04 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall be held invalid or unenforceable, the remaining terms and provisions hereof and the application of such term or provision to Persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

Section 13.05 Relations with Members. Unless named in this Agreement as a Member, or unless admitted to the Company as a Substitute Member or an Additional Member in accordance with this Agreement, no Person shall be considered a Member.

Section 13.06 Waiver of Action for Partition. Each of the Members irrevocably waives during the term of the Company any right that such Member may have to maintain an action for partition with respect to the property of the Company.

Section 13.07 Successors and Assigns. Except as otherwise provided herein, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective transferees, successors and assigns; provided, however, that no Transfer of any Units by any Member shall be made except in accordance with the provisions of Article VIII.

Section 13.08 Entire Agreement. This Agreement, the Class C Profits Interests Grant and the Subscription Agreements (including all Schedules and Exhibits hereto and thereto), together with any applicable terms of any employment, consulting or similar agreement between any Management Member, on the one hand, and the Company or any of the Appgate Entities, on the other hand, constitute the entire agreement among the Company and the Members and between the Members with respect to the subject matter hereof and supersede any agreement or understanding entered into as of a date prior to the Effective Date among or between them with respect to such subject matter; provided, however, that any covenants contained in any other agreement to which a Class C Holder is a party or by which a Class C Holder is bound with respect to confidentiality, non-solicitation, non-competition, non-interference or intellectual property assignment shall be in addition to, and not in lieu of or superseded by, the covenants set forth in this Agreement.[21]

Section 13.09 No Third Party Beneficiaries. It is understood and agreed among the parties that this Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and that no other Person (other than the Indemnified Parties who shall be third-party beneficiaries solely for the purposes of Section 4.07), shall be entitled or be deemed to be entitled to any benefits or rights hereunder or be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

Section 13.10 Other Instruments and Acts. The Members agree to execute any other agreements, documents or instruments or perform any other acts that are or may be necessary to effectuate the provisions of this Agreement.

Section 13.11 Remedies and Waivers. No delay or omission on the part of any party to this Agreement in exercising any right, power or remedy provided by law or provided hereunder shall impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or provided hereunder shall not preclude any other or further exercise of any other right, power or remedy. The rights, powers and remedies

[21] Note to Draft: Under review.

provided hereunder are cumulative and are not exclusive of any rights, powers and remedies provided by law.

Section 13.12 Specific Performance. The parties hereto agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached, that monetary damages would not be a sufficient remedy for such non-performance or breach and the non-breaching parties hereto shall be entitled to an injunction or injunctions to prevent such non-performances or breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 13.13 Confidentiality.

(a) Each Member (other than the Magnetar Members) agrees to keep confidential, and not to use or disclose to any Person, any information relating to the Company, any Appgate Entity or any of their respective businesses, operations, assets or affairs (including information received pursuant to Section 7.02), the identity of any other Member or such Member's interest in the Company and the existence or terms of this Agreement except that such Member may disclose such information to such Member's advisors responsible for matters relating to the Company and who need to know such information in order to perform such responsibilities or to such other Persons as is necessary in the execution of such Member's duties to the Company and its Subsidiaries (each such advisor being hereinafter referred to as an "Authorized Representative"); provided, however, that such Member or any of its Authorized Representatives may disclose the applicable portion of such information solely to the extent that (a) such information is required by law to be included in such Member's tax returns, (b) such information being disclosed is otherwise generally available to the public other than as a result of the disclosure thereof in violation of this Section 13.13(a), or (c) such disclosure, based upon the advice of legal counsel of such Member or Authorized Representative, is required by applicable law. Prior to making any disclosure described in this Section 13.13(a), the applicable Member shall notify the Board of Managers of such disclosure and the advice of such legal counsel and such Member shall cooperate with the Company, if requested by the Board of Managers, in seeking a protective order with respect to the portion of the information required to be disclosed by applicable law.

(b) To the extent that the Company or any Appgate Entity is required by a lender or by applicable laws to disclose information about its or their respective beneficial owners, company applicants or any person with control over the Company or any Appgate Entity, then the Board of Managers, on behalf of the Company or such Appgate Entity, is authorized to and shall make such disclosures and file such reports as are so required. In connection therewith, each Member agrees to provide Manager in a timely fashion with any and all information requested by Manager as may be reasonably required to comply with the Company's or any Appgate Entity's disclosure obligations. For purposes of this Section 13.13(b), "applicable laws" includes any laws applicable to the Company or its subsidiaries regarding financial reporting and recordkeeping for anti-money laundering or countering terrorist financing, including the United States Corporate Transparency Act, the regulations issued thereunder, including 31 C.F.R. 1010.380, and any amendments thereto.

Section 13.14 Public Announcements. Without limiting the generality of Section 13.13, no Member will issue any public announcements or disseminate any advertising or marketing material concerning the Company, any Appgate Entity or any of their respective businesses, operations, assets or affairs or the existence or terms of this Agreement without the prior written approval of the Board of Managers, except to the extent that any such public announcement is required by law. If a public announcement is required by law, the Members will consult with the Board of Managers before making the public announcement. To the extent that any announcement or any advertising or marketing material expressly refers to any Member or their Affiliates, such Member shall, in its sole discretion, have the right to revise such announcement or advertising or marketing material.

Section 13.15 Competitive Activities. Notwithstanding anything to the contrary in this Agreement, except for the Management Members, (a) no Manager or Member shall be required to manage the Company or the Company Business as its sole and exclusive function, (b) any Manager, any Member and any of their respective Affiliates may have other business interests or ventures and may engage in any other activities (in addition to those relating to the Company and the Appgate Entities), and such other business interests, ventures or activities may be of any nature or description (whether or not competitive with the Company or any Appgate Entity), and (c) none of the Company, any other Manager, any other Member or any of their respective Affiliates shall have any right, title or interest in or to (by virtue of this Agreement or any other relationship created hereby) such other business interests, ventures or activities, or to the income, economics or proceeds derived therefrom, and (d) the pursuit of such other business interests, ventures or activities, even if competitive with the Company Business, shall not be deemed wrongful or improper or a breach of this Agreement. For the avoidance of doubt, the immediately preceding clauses (a) through (d) shall not apply to, and such clauses shall be deemed not to pertain to, the Management Members.

Section 13.16 Legal Counsel Relationships. Each of the Company, the Members and the Managers acknowledges and agrees that Willkie Farr & Gallagher LLP ("Willkie") has represented the Company and the Magnetar Members in connection with this Agreement and other transactions related hereto (the "Transactions"). Except for Willkie's representation of the Company and the Magnetar Members with respect to the Transactions, in no event shall an attorney-client relationship exist between Willkie, on the one hand, and any other Member and/or their Affiliates, on the other hand. Each of the Members further agrees and consents that Willkie shall be permitted to render legal advice and to provide legal services to the Magnetar Members and to the Company from time to time, and each of the Members covenants and agrees that such representation of the Magnetar Members or the Company by Willkie from time to time shall not disqualify Willkie from providing legal advice and legal services to the Magnetar Members or any of their respective Affiliates in matters related or unrelated to this Agreement and the Transactions. Each of the parties to this Agreement hereby agrees, on its own behalf and on behalf of its directors, member, partners, officers, employees and Affiliates, that Willkie may serve as counsel to each of the Magnetar Members and their Affiliates, on the one hand, and the Company and the Appgate Entities, on the other hand, in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the Transactions, and each of the parties hereto hereby

consents thereto and waives any conflict of interest arising therefrom, and each of such parties shall cause any Affiliate thereof to consent waive any conflict of interest arising from such representation.

Section 13.17 Method for Notices. In the event a notice or document is required to be sent, delivered or given pursuant to this Agreement to the Company, the Board of Managers or any Member, any such notice or document shall be in writing and shall be deemed to be sent, delivered or given, (a) when personally delivered, if sent, delivered or given in person or by a messenger or courier service, (b) on the date of transmission, if sent, delivered or given by email (with confirmation of receipt), (c) on the first Business Day following the day sent, if sent, delivered or given by express mail or a messenger or courier service or (d) three (3) Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid. Any such notices or documents shall be addressed to all of the parties entitled to receive such notice or document at the email addresses on file in the Company's books and records. The Company or any Member may effect a change of address for purposes of this Agreement by giving written notice thereof to the Company, the Board of Managers and the other Members, in accordance with this Section 13.17.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SERIES A MEMBERS:

APPGATE INVESTORS, LLC
By: Magnetar Financial LLC, its [investment manager]

By:_____
Name:
Title:

SERIES A-1 MEMBERS:

[TBD if any]

SERIES B MEMBERS:

APPGATE FUNDING, LLC

By: _____
Name:
Title:

SERIES C MEMBERS:

APPGATE INVESTORS, LLC
By: Magnetar Financial LLC, its [investment manager]

By:_____
Name:
Title:

SERIES C-1 MEMBERS:

[TBD if any]

Exhibit 4.03

1. Amend or modify any of the organizational documents or business purpose.

2. Increase or decrease the number of Managers constituting the Board of Managers or create or appoint any member of any committee, other than as expressly provided for in this Agreement, or appoint or remove any directors, managers or similar persons from any board or committee.

3. Issue to, or redeem from, any Member any Interests or any other security or equity interest.

4. Directly or jointly or in concert with others engage in any new line of business or offer new products or services that materially vary from those engaged in or offered by the Company and the Company Subsidiaries as at the date hereof.

5. Approve any component of any business plan and annual budget (if any) for the ensuing fiscal year, and any material changes thereto or material deviations therefrom.

6. Make a capital call or request for additional Capital Contributions other than set forth in Section 3.01.

7. Declare or pay any dividend or make any distribution.

8. Determine Fair Market Value with respect to any Securities or assets.

9. Make any capital expenditures in excess of $[●].

10. Create any Subsidiary (other than any Subsidiary 100% of the Equity Securities of which are held directly or indirectly by the Company or any of its Subsidiaries) or participate in any partnership or joint venture.

11. Change the location of the headquarters.

12. Enter into any related party transaction, including any transaction with an Affiliate of the Company or any Manager, other than (a) any transactions solely among any Appgate Entities and (b) employee compensation and benefits in accordance herewith.

13. Enter into a material acquisition or material disposition (for greater certainty, including acquisitions of any Person, equity interests, business, line of business or intellectual property portfolio, and a Control Sale), material sale, material combination, material merger, material consolidation, or any material investments in any securities or indebtedness of any Person.

14. Sell, license, lease or otherwise dispose of any material asset outside of the ordinary course of business.

15. Purchase, license, lease, exchange or otherwise acquire the assets or equity interests of any Person.

16. Enter into, terminate, or amend any arrangements, contracts, or transactions of a material nature.

17. Enter into, as lessor or as lessee, any lease for a duration exceeding [●] years or involving aggregate premium and annual rental payments in excess of $[●].

18. Grant any material rights in or over any intellectual property.

19. Enter into any other transaction outside the ordinary of course of business or otherwise than on arm's length terms.

20. Except for an Initial Public Offering initiated in accordance with Section 11.01, undertake an initial public offering.

21. Incur indebtedness for borrowed money, including the issuance of debt securities and the provision of any guarantee for other credit support for borrowed money (including, in each case, by way of any recapitalization or refinancing).

22. Create a security interest in any material asset, other than a security interest incurred or created in the ordinary course of business.

23. Appoint or remove the chief executive officer and any other senior level management, or amend the compensation terms or agreements of those persons.

24. Agree to remunerate any person at a rate in excess of [150%] per annum or increase the remuneration of any such person to a rate in excess of [5%] per annum.

25. Establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for any person.

26. Establish or amend any pension scheme or grant any pension rights to any Person.

27. Dissolve, wind-up or liquidate or initiate a bankruptcy proceeding.

28. Initiate or settle any litigation or arbitration proceeding against any party.

29. Appoint or removing the auditors.

30. Make any material change in the accounting policies and principles, except as required by law or GAAP.

31. Change any material tax characterizations, except as required by law or GAAP.

32. Authorize or agree to take any of the foregoing actions.

EXHIBIT E

Plan

Draft; Subject to Approval

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
APPGATE, INC., *et al.*,[1]	)	Case No. 24-[_____] (___)
Debtors.	)	(Joint Administration Requested)

JOINT PREPACKAGED
PLAN OF REORGANIZATION OF
APPGATE, INC. AND ITS DEBTOR SUBSIDIARIES
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

COLE SCHOTZ P.C.
Patrick Reilley (DE Bar No. 4451)
Stacy Newman (DE Bar No. 5044)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
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snewman@coleschotz.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Edward O. Sassower, P.C. (*pro hac vice* pending)
Christopher Marcus, P.C. (*pro hac vice* pending)
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christopher.marcus@kirkland.com
derek.hunter@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

Dated: May [3], 2024

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Appgate, Inc. (7231); Appgate Cybersecurity, Inc. (5215); Cryptzone Worldwide, Inc. (3539); Cryptzone International Holdings Inc. (6133); Cryptzone North America Inc. (6777); Immunity, Inc. (3955); Immunity Federal Services, LLC (9722); Immunity Products, LLC (9570); Immunity Services, LLC (9647); Easy Solutions Enterprises Corp. (1954); Catbird Networks, Inc. (6028); and Easy Solutions, Inc. (0401). The location of the Debtors' service address is: 2 Alhambra Plaza, Suite PH–1–B, Coral Gables, Florida 33134.

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INTRODUCTION

Appgate, Inc. and the other above-captioned debtors and debtors in possession (collectively, the "Debtors") propose this prepackaged chapter 11 plan of reorganization (as amended, supplemented, or otherwise modified from time to time, this "Plan") for the resolution of the outstanding Claims against and Equity Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in Article I.A of this Plan. Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Equity Interests pursuant to the Bankruptcy Code. Holders of Claims against or Equity Interests in the Debtors may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of this Plan, the Restructuring Transactions, and certain related matters. The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code. The classification of Claims and Equity Interests set forth in Article III of this Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable and set forth herein. This Plan does not contemplate substantive consolidation of any of the Debtors.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD REVIEW THE SECURITIES LAW RESTRICTIONS AND NOTICES SET FORTH IN THIS PLAN (INCLUDING WITHOUT LIMITATION, UNDER ARTICLE IV.E AND ARTICLE IV.M HEREOF) IN FULL.

THE ISSUANCE OF ANY SECURITIES REFERRED TO IN THIS PLAN SHALL NOT CONSTITUTE AN INVITATION OR OFFER TO SELL, OR THE SOLICITATION OF ANY INVITATION OR OFFER TO BUY, ANY SECURITIES IN CONTRAVENTION OF APPLICABLE LAW IN ANY JURISDICTION. NO ACTION HAS BEEN TAKEN, NOR WILL BE TAKEN IN ANY JURISDICTION THAT WOULD PERMIT A PUBLIC OFFERING OF ANY SECURITIES REFERRED TO IN THIS PLAN (OTHER THAN SECURITIES ISSUED PURSUANT TO SECTION 1145 OF THE BANKRUPTCY CODE IN A DEEMED PUBLIC OFFERING) IN ANY JURISDICTION WHERE SUCH ACTION FOR THAT PURPOSE IS REQUIRED.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "*1L Convertible Noteholders*" means the Holders of the 1L Convertible Notes Claims.

2. "*1L Convertible Notes*" means the convertible notes issued and outstanding pursuant to the 1L Convertible NIA.

3. "*1L Convertible Notes Agent*" means U.S. Bank Trust Company, National Association, or any assign or successor thereto in its capacity as collateral Agent under the 1L Convertible NIA.

4. "*1L Convertible Notes Claims*" means any Claim arising on account of the 1L Convertible Notes.

5. "*1L Convertible NIA*" means that certain amended and restated convertible notes issuance agreement, dated as of June 9, 2023, by and among Appgate Cybersecurity, Inc., as issuer, Appgate, Inc., as parent, the guarantors party thereto, Magnetar Financial LLC, as representative of the Holders, and U.S. Bank Trust Company, National Association, as collateral Agent, as amended, restated, modified, or supplemented from time to time.

6. "*1L Convertible Notes PIK Interest*" means the 8.5 percent interest earned on each 1L Convertible Note which is paid in kind by adding such amounts to the aggregate outstanding balance of such 1L Convertible Notes.

7. "*2L Convertible Noteholders*" means the Holders of the 2L Convertible Notes Claims.

8. "*2L Convertible Notes*" means the loans outstanding under the 2L Convertible NIA.

9. "*2L Convertible Notes Agent*" means Appgate Funding, LLC or any assign or successor thereto in its capacity as collateral Agent under the 2L Convertible NIA.

10. "*2L Convertible Notes Claims*" means any Claim arising on account of the 2L Convertible Notes.

11. "*2L Convertible NIA*" means that certain convertible notes issuance agreement dated as of July 20, 2023, by and among Appgate Cybersecurity, Inc., as borrower, Appgate, Inc., as parent, the guarantors party thereto, and Appgate Funding, LLC, as representative of the Holders and as collateral Agent, as amended, modified, or supplemented from time to time.

12. "*3L RCF Claims*" means Claims arising on account of the 3L RCF Loans.

13. "*3L RCF Credit Agreement*" means that certain amended and restated credit agreement dated as of June 9, 2023, by and among Appgate Cybersecurity, Inc. as borrower, Appgate, Inc. as parent, the guarantors party thereto, and SIS Holdings, L.P., as lender, as amended, modified, or supplemented from time to time.

14. "*3L RCF Lender*" means the lender from time to time party to the 3L RCF Credit Agreement.

15. "*3L RCF Loans*" means the loans outstanding under the 3L RCF Credit Agreement.

16. "*Administrative Claim*" means a Claim against any of the Debtors arising on or after the Petition Date and before the Effective Date for a cost or expense of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses of preserving the Estates and operating the businesses of the Debtors; (b) the Allowed Professional Fee Claims; (c) all fees and charges assessed against the Estates under chapter 123 of the Judicial Code; and (d) Restructuring Expenses.

17. "*Administrative Claims Bar Date*" means the applicable deadline by which all requests for Administrative Claims must be Filed and served on the Debtors, which shall be 30 days after the Effective Date; *provided* that Filing a request for payment of Administrative Claims is not required where the Plan, Bankruptcy Code, or a Final Order does not require such Filing.

18. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity was a debtor in a case under the Bankruptcy Code.

19. "*Agent*" means any administrative agent, escrow agent, collateral agent, or similar Entity under the 1L Convertible Notes, the 2L Convertible Notes, the 3L RCF Loans, and/or the DIP Facility, including any successors thereto.

20. "*Agents/Trustees*" means, collectively, each of the Agents and Trustees.

21. "*Allowed*" means, as to a Claim or an Equity Interest (or a portion thereof), a Claim or an Equity Interest expressly allowed under this Plan, under the Bankruptcy Code, or by a Final Order, as applicable. For the avoidance of doubt, (a) there is no requirement to File a Proof of Claim (or move the Bankruptcy Court for allowance) to be an Allowed Claim under this Plan and (b) the Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy Law; *provided*, *however*, that the Reorganized Debtors shall retain all Claims and defenses with respect to Allowed Claims that are Reinstated or otherwise Unimpaired pursuant to this Plan.

22. "*Appgate*" means Debtor Appgate, Inc., a public company incorporated under the Laws of Delaware.

23. "*Avoidance Actions*" means any and all actual or potential avoidance, recovery, subordination, or other Claims, Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy Law, including Claims, Causes of Action, or remedies arising under chapter 5 of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes or common Law, including fraudulent transfer Laws.

24. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time.

25. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware.

26. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

27. "*Business Day*" means any day other than a Saturday, Sunday, "legal holiday" (as defined in Bankruptcy Rule 9006(a)), or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

28. "*Cash*" means cash and cash equivalents, including bank deposits, checks, and other similar items, in legal tender of the United States of America.

29. "*Cash Collateral*" has the meaning set forth in section 363(a) of the Bankruptcy Code.

30. "*Cause of Action*" means collectively, any and all Claims, Equity Interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, Avoidance Actions, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract, tort, Law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and Claims under contracts or for breaches of duties imposed by Law or in equity; (b) the right to object to or otherwise contest Claims or Equity Interests; (c) Claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any Avoidance Actions.

31. "*Chapter 11 Cases*" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all the Debtors, the procedurally consolidated and jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court.

32. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

33. "*Claims Objection Deadline*" means the deadline for objecting to the allowance of a Claim asserted against a Debtor as set forth in section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and/or any order of the Bankruptcy Court regarding Claims objections, which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Reorganized Debtors, as applicable, or by an order of the Bankruptcy Court for objecting to such Claims.

34. "*Claims Register*" means the official register of Claims and Equity Interests in the Debtors maintained by the Solicitation Agent.

35. "*Class*" means a class of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

36. "*Class C Common Units*" means the new Class C common interests issued by New Appgate Holdings on the Effective Date and to be held by the DIP Lenders, the 1L Convertible Noteholders, and the 2L Convertible Noteholders.

37. "*Class C Common Units Holders*" means the Holders of the Class C Common Units and the Class C-1 Common Units.

38. "*Class C Holders*" means, together, the Class C Profits Interests Holders and the Class C Common Units Holders.

39. "*Class C AGF Units*" means the Class C Units attributable to the Allowed 2L Convertible Notes Claims, which shall be equal to approximately 5.89 percent of the Class C Units issued on the Effective Date and subject to dilution on account of the Management Incentive Plan and the terms thereof.

40. "*Class C Magnetar Units*" means the Class C Units or Class C-1 Units attributable to the Allowed DIP Claims and the Allowed 1L Convertible Notes Claims, which shall, collectively, be equal to approximately 94.11 percent of the Class C Units issued on the Effective Date and subject to dilution on account of the Management Incentive Plan and the terms thereof.

41. "*Class C Profits Interests*" means the new Class C profits interests issued by New Appgate Holdings on or as soon as reasonably practicable after the Effective Date and to be held by the Management Vehicle on behalf of the participants in the Management Incentive Plan.

42. "*Class C Profits Interests Holders*" means the Holders of the Class C Profits Interests.

43. "*Class C Units*" means, together, the Class C Profits Interests, Class C Common Units, and Class C-1 Common Units.

44. "*Class C-1 Common Units*" means the new Class C-1 Common Units issued by New Appgate Holdings on the Effective Date, to the extent that an election is made by or on behalf of a DIP Lender or a 1L Convertible Noteholder, and to be held by such electing DIP Lenders and the 1L Convertible Noteholders.

45. "*CM/ECF*" means the Bankruptcy Court's case management and electronic case filing system.

46. "*Combined Hearing*" means the hearing held by the Bankruptcy Court on Confirmation, as such hearing may be continued from time to time.

47. "*Company Claims/Equity Interests*" means any Claim against, or Equity Interest in, a Company Party, including, without limitation, the 1L Convertible Notes Claims, the 2L Convertible Notes Claims, and the 3L RCF Claims.

48. "*Company Parties*" means Appgate and each of its direct and indirect subsidiaries that are or become parties to the RSA, solely in their capacity as such.

49. "*Compensation and Benefits Programs*" means all employment and severance agreements and policies, and all employment, wages, compensation, and benefit plans and policies, workers' compensation programs, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit plans, incentive and retention plans, programs, and payments, life and accidental death and dismemberment insurance plans and programs, for all employees of the Debtors, and all amendments and modifications thereto, applicable to the Debtors' employees, former employees, retirees, and non-employee directors and managers, in each case existing with the Debtors as of immediately prior to the Effective Date.

50. "*Confirmation*" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases.

51. "*Confirmation Date*" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

52. "*Confirmation Order*" means the order of the Bankruptcy Court approving the adequacy of the Disclosure Statement and confirming this Plan.

53. "*Consenting 1L Convertible Noteholders*" means the Holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, 1L Convertible Notes Claims that have executed and delivered counterpart signature pages to the RSA, a Joinder, or a Transfer Agreement to counsel to the Company Parties.

54. "*Consenting 2L Convertible Noteholders*" means the Holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, 2L Convertible Notes Claims that have executed and delivered counterpart signature pages to the RSA, a Joinder, or a Transfer Agreement to counsel to the Company Parties.

55. "*Consenting 3L RCF Lender*" means the Holder of the 3L RCF Claims that has executed and delivered a counterpart signature page to the RSA to counsel to the Company Parties.

56. "*Consenting Equityholders*" means, collectively, the Holders of Equity Interests that are signatories to the RSA or any subsequent Holder of Equity Interests that becomes party thereto in accordance with the terms of the RSA, each solely in their capacity as such.

57. "*Consenting Lenders*" means, collectively, the Consenting 1L Convertible Noteholders, Consenting 2L Convertible Noteholders, and the Consenting 3L RCF Lender.

58. "*Consenting Stakeholders*" means, collectively, the Consenting Equityholders and the Consenting Lenders.

59. "*Consummation*" means the occurrence of the Effective Date.

60. "*Corporate Governance Documents*" means, collectively and as applicable, the organizational and governance documents for New Appgate Holdings and the other Reorganized Debtors, as applicable, including, but not limited to, the New Limited Liability Company Agreement and any other charters, bylaws, certificates of incorporation, certificates of formation, limited liability company agreements, operating agreements, or other organizational documents or shareholders' agreements, each consistent with the terms and conditions as set forth in the RSA and the Restructuring Term Sheet and section 1123(a)(6) of the Bankruptcy Code, as applicable.

61. "*Cure*" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

62. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") covering any of the Debtors' current or former directors', managers', officers', and/or employees' liability and all agreements, documents, or instruments relating thereto.

63. "*Debtor Release*" means the release given by the Debtors to the Released Parties as set forth in Article VIII.C of this Plan.

64. "*Debtors' Advisors*" means each of the following: (a) Kirkland & Ellis LLP; (b) Cole Schotz P.C.; (c) Triple P RTS, LLC; (d) Triple P Securities, LLC; and (e) the Solicitation Agent.

65. "*Definitive Documents*" means, collectively, (a) this Plan; (b) the Confirmation Order; (c) the Disclosure Statement; (d) the order of the Bankruptcy Court approving the Disclosure Statement and the other Solicitation Materials; (e) the first day pleadings and all orders sought pursuant thereto; (f) the Plan Supplement; (g) the Restructuring Term Sheet; (h) the New Limited Liability Company Agreement; and (i) all other agreements,

instruments, pleadings, orders, forms, questionnaires, and other documents (including all exhibits, schedules, supplements, appendices, annexes, instructions, and attachments thereto) that are utilized to implement or effectuate, or that otherwise relate to, the Restructuring Transactions, including each of the Definitive Documents enumerated in this Plan.

66. "*DIP Agent*" means U.S. Bank Trust Company, National Association, in its capacity as the administrative agent and collateral agent under the DIP Credit Agreement and its successors, assigns, or any replacement agent appointed pursuant to the terms of the DIP Facility.

67. "*DIP Claim*" means any Claim arising on account of the DIP Facility.

68. "*DIP Credit Agreement*" means the debtor-in-possession financing credit agreement by and among certain Company Parties, the DIP Agent, and the DIP Lenders setting forth the terms and conditions of the DIP Facility, attached to the RSA as Exhibit C.

69. "*DIP Facility*" means the $18 million senior secured superpriority debtor-in-possession financing facility to be provided to the Debtors on the terms and conditions set forth in the DIP Credit Agreement and the DIP Orders.

70. "*DIP Facility Documents*" means, collectively, any documents governing the DIP Facility and any amendments, modifications, and supplements thereto, and together with any related notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith.

71. "*DIP Lenders*" means the lenders party to the DIP Credit Agreement.

72. "*DIP Loans*" means all loans to be provided by the DIP Lenders under the DIP Facility.

73. "*DIP Orders*" means any order entered in the Chapter 11 Cases approving the DIP Facility (whether interim or final) consistent with the DIP Credit Agreement.

74. "*Disbursing Agent*" means, as applicable, the Reorganized Debtors or any Entity the Reorganized Debtors select to make or to facilitate distributions in accordance with this Plan, which Entity may include the Solicitation Agent and the Agents/Trustees, as applicable.

75. "*Disclosure Statement*" means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable Law, to be approved pursuant to the Confirmation Order.

76. "*Disputed*" means, as to a Claim or an Equity Interest, a Claim or an Equity Interest (or portion thereof): (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has Filed a Proof of Claim or Proof of Equity Interest or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

77. "*Distribution Date*" means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, with the first such date occurring on or as soon as is reasonably practicable after the Effective Date, upon which the Disbursing Agent shall make distributions to Holders of Allowed Claims and/or Allowed Equity Interests (as and if applicable) entitled to receive distributions under this Plan.

78. "*Distribution Record Date*" means the record date for purposes of making distributions under this Plan on account of Allowed Claims, which date shall be the first day of the Combined Hearing or such other date agreed to by the Debtors.

79. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of this Plan have been satisfied or waived in accordance with Article IX.B of this Plan. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

80. "*Employment Agreement*" means any new and/or existing employment agreement or letter, indemnification agreement, severance agreement, or other agreement entered into with the Debtors' current and former officers and other employees by the Reorganized Debtors.

81. "*Entity*" has the meaning set forth in section 101(15) of the Bankruptcy Code.

82. "*Equity Interest*" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor (regardless of whether such interests are held directly or indirectly), and options, warrants, rights, or other Securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (in each case whether or not arising under or in connection with any employment agreement, separation agreement, or employee incentive plan or program of a Debtor as of the Petition Date and whether or not certified, transferable, preferred, common, voting, or denominated "stock" or similar Security and regardless of whether such interests are held directly or indirectly); *provided* that, for the avoidance of doubt, Equity Interest does not include the 1L Convertible Notes and 2L Convertible Notes.

83. "*Equity Security*" has the meaning set forth in section 101(16) of the Bankruptcy Code, in a Debtor.

84. "*Estate*" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

85. "*Exchange Act*" means the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a et seq, or any similar federal, state, or local Law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

86. "*Exculpated Parties*" means, collectively, and in each case in its capacity as such, the Debtors.

87. "*Executive Officers*" means each of, Manuel D. Medina, Leo Taddeo, Rene A. Rodriguez, and Jeremy M. Dale.

88. "*Executory Contract*" means a contract to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

89. "*Federal Judgment Rate*" means the federal judgment rate in effect as of the Petition Date.

90. "*File*" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases. "Filed" and "Filing" shall have correlative meanings.

91. "*Final DIP Order*" means one or more Final Orders entered approving the DIP Facility and authorizing the Debtors' use of Cash Collateral.

92. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, vacated, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing thereof has been timely sought, or, if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied, or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or

rehearing shall have expired; *provided*, however, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be Filed with respect to such order or judgment.

93. "*General Unsecured Claim*" means any Claim against any of the Debtors that is not (a) an Administrative Claim, (b) a Professional Fee Claim, (c) a Priority Tax Claim, (d) a Secured Tax Claim, (e) a DIP Claim, (f) an Other Secured Claim, (g) an Other Priority Claim, (h) a 1L Convertible Notes Claim, (i) a 2L Convertible Notes Claim, (j) a 3L RCF Claim, (k) an Intercompany Claim, (l) an Intercompany Equity Interest, (m) an Equity Interest, (n) a Section 510(b) Claim, and (o) a Restructuring Expense.

94. "*Governing Body*" means, in each case in its capacity as such, the board of directors, board of managers, manager, managing member, general partner, investment committee, special committee, or such similar governing body of any of the Debtors.

95. "*Governmental Unit*" has the meaning set forth in section 101(27) of the Bankruptcy Code.

96. "*Holder*" means an Entity that is the record owner of a Claim against or Equity Interest in any Debtor, as applicable. For the avoidance of doubt, affiliated record owners of Claims or Equity Interests managed or advised by the same institution shall constitute separate Holders.

97. "*Impaired*" means, with respect to a Class of Claims or Equity Interests, a Class of Claims of Equity Interests that is "impaired" within the meaning of section 1124 of the Bankruptcy Code.

98. "*Intercompany Claim*" means any Claim held by a Debtor or Non-Debtor against another Debtor or Non-Debtor.

99. "*Intercompany Equity Interest*" means an Equity Interest in one Debtor held by another Debtor.

100. "*Joinder*" means a joinder to the RSA substantially in the form attached to the RSA as Exhibit G.

101. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as amended from time to time.

102. "*Law*" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

103. "*Lender Professionals*" means, collectively: (a) Willkie Farr & Gallagher LLP, as counsel to the DIP Lenders and the 1L Convertible Noteholders; (b) Young Conaway Stargatt & Taylor, LLP, as counsel to the DIP Lenders and the 1L Convertible Noteholders; (c) M3 Partners, LP, as financial advisors to the DIP Lenders and the 1L Convertible Noteholders; (d) Shipman & Goodwin LLP, as counsel to the DIP Agent and the 1L Convertible Notes Agent; (e) Greenberg Traurig, LLP, as counsel to the 2L Convertible Noteholders; and (f) Latham & Watkins LLP and [Local Counsel], as counsel to the 3L RCF Lender.

104. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

105. "*Management Incentive Plan*" means the post-emergence management incentive plan to be designed and adopted by the New Board following the Effective Date, to be used to incentivize and compensate employees, directors, consultants, and other service providers, which will include (a) the ability to grant incentive equity awards representing up to 15 percent of the Class C Units (all of which shall be Class C Profits Interests) on a fully diluted basis and (b) other terms and conditions customary for similar equity plans as determined by the New Board in its sole discretion (including, with respect to participants, allocation of awards and vesting); *provided* that any Management Incentive Plan shall provide that distributions to Class C Profits Interests Holders in respect of any authorized but

unissued, unvested, or forfeited Class C Profits Interests shall be distributed in accordance with the distribution allocations provided in the New Limited Liability Company Agreement.

106. "*Management Vehicle*" means the newly-formed management holdings vehicle which will hold Class C Profits Interests on behalf of the participants in the Management Incentive Plan.

107. *"New Appgate Holdings*" means a new corporation, limited liability company, partnership, or other Entity that may be formed, or any Entity designated by the Debtors, in connection with the implementation of the Restructuring Transaction and in accordance with the Restructuring Transactions Memorandum, which in any case shall be the ultimate parent of the Company Parties on and after the Effective Date.

108. "*New Board*" means the board of directors or similar governing body of New Appgate Holdings.

109. "*New Equity Interests*" means equity or membership interests in New Appgate Holdings issued on the Effective Date, including the Series A Units, Series B Units, and Class C Units.

110. "*New Limited Liability Company Agreement*" means that certain Amended and Restated Limited Liability Company Agreement of New Appgate Holdings, substantially in the form attached as Exhibit D of the RSA.

111. "*Non-Debtor*" means direct and indirect subsidiaries of Appgate that are not Debtors.

112. "*Other Priority Claim*" means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

113. "*Other Secured Claim*" means: (a) a Claim secured by a Lien on any assets of the Debtors, which Lien is valid, perfected, and enforceable under applicable Law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy Law, and which is duly established in the Chapter 11 Cases, but only to the extent of the value of the Holder's interest in the collateral that secures payment of the Claim; (b) a Claim against the Debtors that is subject to a valid right of recoupment or setoff under section 553 of the Bankruptcy Code, but only to the extent of the Allowed amount subject to recoupment or setoff as provided in section 506(a) of the Bankruptcy Code; and/or (c) a Claim deemed or treated under this Plan or separate order of the Bankruptcy Court as a Secured Claim.

114. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

115. "*Petition Date*" means the date on which the Debtors commenced the Chapter 11 Cases.

116. "*Plan Distribution*" means a payment or distribution to Holders of Allowed Claims, Allowed Equity Interests, or other eligible Entities under and in accordance with this Plan.

117. "*Plan Objection Deadline*" means June 7, 2024, at 4:00 p.m., prevailing Eastern Time, which is the deadline for filing objections to the adequacy of the Disclosure Statement and Confirmation of this Plan.

118. "*Plan Supplement*" means the compilation of documents and forms of documents, schedules, and exhibits to this Plan that will be Filed by the Debtors with the Bankruptcy Court, each of which shall be in form and substance reasonably acceptable to the DIP Lenders, the 1L Convertible Noteholders, the 2L Convertible Noteholders, and, to the extent required by the RSA, the 3L RCF Lender and the Consenting Equityholders; *provided, that* the form of the New Limited Liability Company Agreement attached to the RSA as Exhibit D may be modified without the consent of the Consenting 2L Convertible Noteholders unless such modification relates to the rights of the Consenting 2L Convertible Noteholders thereunder.

119. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

120. "*Pro Rata*" means, unless otherwise specified, the proportion that an Allowed Claim or an Allowed Equity Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Equity Interests in that

Class or the proportion of the Allowed Claims or Allowed Equity Interests in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claims or Allowed Equity Interests under the Plan.

121. "*Professional*" means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

122. "*Professional Fee Amount*" means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses that Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Article II.C of this Plan.

123. "*Professional Fee Claim*" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred by such Professionals through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional's requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

124. "*Professional Fee Escrow Account*" means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Amount.

125. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

126. "*Proof of Equity Interest*" means a proof of Equity Interest Filed against any of the Debtors in the Chapter 11 Cases.

127. "*Reinstate*" means with respect to Claims or Equity Interests, that the Claim or Equity Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. "Reinstated" and "Reinstatement" shall have correlative meanings.

128. "*Related Party*" means, collectively, with respect to any Person or Entity, each of, and in each case in its capacity as such, such Person's or Entity's current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

129. ["*Released Parties*" means, collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Consenting Stakeholders; (d) the Releasing Parties; (e) the DIP Lenders; (f) the Agents/Trustees; (g) current and former Affiliates of each Entity in clause (a) through the following clause (h); and (h) each Related Party of each Entity in clause (a) through this clause (h); *provided* that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases described in Article VIII.D hereof; or (y) timely objects to the releases contained in Article VIII.D hereof and such objection is not resolved before Confirmation.

130. "*Releasing Parties*" means, collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Consenting Stakeholders; (d) the DIP Lenders; (e) the Agents/Trustees; (f) all Holders of Claims or Equity Interests that vote to accept this Plan; (g) all Holders of Claims or Equity Interests who are deemed to accept the Plan but who do not affirmatively opt out of the releases provided for in the Plan by checking the box on the applicable notice of non-voting status indicating that they opt not to grant the releases provided for in the Plan;

(h) all Holders of Claims who abstain from voting on this Plan and who do not affirmatively opt out of the releases provided for in this Plan by checking the box on the applicable ballot indicating that they opt not to grant the releases provided for in this Plan; (i) all Holders of Claims or Equity Interests who vote to reject this Plan or are deemed to reject this Plan and who do not affirmatively opt out of the releases provided for in this Plan by checking the box on the applicable ballot or notice of non-voting status indicating that they opt not to grant the releases provided for in this Plan; (j) to the maximum extent permitted by Law, each current and former Affiliate of each Entity in clause (a) through the following clause (k); and (k) to the maximum extent permitted by Law, each Related Party of each Entity in clause (a) through this clause (k); *provided* that, in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in Article VIII.D hereof; or (y) timely objects to the releases contained in Article VIII.D hereof and such objection is not resolved before Confirmation.][2]

131. "*Reorganized Debtors*" means the Debtors as reorganized under this Plan, or any successor or assign thereto, by transfer, merger, consolidation, or otherwise.

132. "*Required Consenting 1L Convertible Noteholders*" means, as of the relevant date, the Consenting 1L Convertible Noteholders holding at least 50.01 percent of the aggregate outstanding principal amount of the 1L Convertible Notes Claims that are held by the Consenting 1L Convertible Noteholders.

133. "*Restructuring Expenses*" means the reasonable and documented fees and expenses of the Lender Professionals accrued since the inception of their respective engagements related to the Chapter 11 Cases and the implementation of the Restructuring Transactions and not previously paid by, or on behalf of, the Debtors, in each case, in accordance with the engagement letters of such consultant or professional signed by the Company Parties or by the applicable Consenting Stakeholders, as the case may be, without further order of, or application to, the Bankruptcy Court by such consultant or professionals; *provided* that the reasonable and documented fees and expenses for the advisors to (a) the 2L Convertible Noteholders and 2L Convertible Notes Agent, collectively, shall be subject to a total cap of $200,000 and (b) the 3L RCF Lender shall be subject to a total cap of $150,000, with each such applicable fee cap with respect to each of (a) and (b) applying to fees arising since the inception of such engagement, regardless of whether such fees and expenses were incurred prepetition or postpetition, and each such fee cap in (a) or (b) may be increased with the consent of the DIP Lenders and Debtors.

134. "*Restructuring Term Sheet*" means the term sheet attached to the RSA as Exhibit B.

135. "*Restructuring Transactions*" means the transactions described in Article IV of this Plan.

136. "*Restructuring Transactions Memorandum*" means the description of the steps to be carried out to effectuate the Restructuring Transactions in accordance with this Plan and as set forth in the Plan Supplement. The Restructuring Transactions Memorandum shall, among other things, specify the Entity that will issue the New Equity Interests.

137. "*RSA*" means that certain Restructuring Support Agreement, dated as of May 2, 2024, by and among the Company Parties, the Consenting Stakeholders, and the other parties thereto, including all exhibits thereto, as may be amended, modified, or supplemented from time to time, in accordance with its terms, attached to the Disclosure Statement as Exhibit B.

138. "*Schedule of Proposed Cure Amounts*" means any schedule (including any amendments, supplements, or modifications thereto) of the Debtors' good faith estimate of proposed Cure amounts (if any) with respect to each of the Executory Contracts and Unexpired Leases to be assumed by the Debtors pursuant to this Plan, which schedule shall be included in the Plan Supplement.

139. "*Schedule of Retained Causes of Action*" means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to this Plan, as the same may be amended, modified, or

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2 The release provisions and related defined terms in the Plan remain subject to ongoing review by the Debtors' special committee of disinterested directors.

supplemented from time to time, which, for the avoidance of doubt, shall not include any Causes of Action that are settled, released, or exculpated under this Plan.

140. "*Section 510(b) Claim*" means any Claim against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code, whether by operation of law or contract.

141. "*Secured Claim*" means a Claim that is: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable Law or by reason of a Bankruptcy Court order, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Debtors' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to this Plan, or separate order of the Bankruptcy Court, as a secured claim.

142. "*Secured Tax Claim*" means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

143. "*Securities Act*" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local Law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

144. "*Security*" means any security, as defined in section 2(a)(1) of the Securities Act.

145. "*Series A Holders*" means the Holders of the Series A Units or Series A-1 Units.

146. "*Series A Units*" means the new Series A Units to be issued by New Appgate Holdings on the Effective Date and to be held by the DIP Lenders and the 1L Convertible Noteholders.

147. "*Series A-1 Units*" means the new Series A-1 Units to be issued by New Appgate Holdings on the Effective Date, to the extent that an election is made by or on behalf of a DIP Lender or 1L Convertible Noteholder, and to be held by such electing DIP Lenders and 1L Convertible Noteholders.

148. "*Series B Holders*" means the Holders of the Series B Units.

149. "*Series B Units*" means the new Series B Units to be issued by New Appgate Holdings on the Effective Date and to be held by the 2L Convertible Noteholders.

150. "*Solicitation Agent*" means Donlin, Recano & Company, Inc., the Claims, noticing, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

151. "*Solicitation Materials*" means all materials provided in connection with the solicitation of votes on this Plan pursuant to sections 1125 and 1126 of the Bankruptcy Code.

152. "*Third-Party Release*" means the release set forth in Article VIII.D of this Plan.

153. "*Transfer Agreement*" means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of the RSA, substantially in the form attached as Exhibit F to the RSA.

154. "*Trustee*" means any indenture trustee, collateral trustee, or other trustee or similar Entity under the 1L Convertible Notes, the 2L Convertible Notes, the 3L RCF Loans, and/or the DIP Facility, including any successors thereto.

155. "*U.S. Trustee*" means the Office of the United States Trustee for the District of Delaware.

156. "*Unclaimed Distribution*" means any distribution under this Plan on account of an Allowed Claim or Allowed Equity Interest to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check within 180 calendar days of receipt; (b) given notice to the Reorganized Debtors of an intent to accept a particular distribution within 180 calendar days of receipt; (c) responded to the Debtors' or Reorganized Debtors' requests for information necessary to facilitate a particular distribution prior to the deadline included in such request for information; or (d) timely taken any other action necessary to facilitate such distribution.

157. "*Unexpired Lease*" means a lease of non-residential, real property to which one or more of the Debtors are a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

158. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests, a Class of Claims or Equity Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

159. "*Voting Report*" means the report certifying the methodology for the tabulation of votes and result of voting under this Plan.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented in accordance with this Plan or the Confirmation Order, as applicable; (4) any reference to an Entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (8) subject to the provisions of any contract, charter, bylaws, limited liability company agreements, operating agreements, certificates of incorporation, or other organizational documents or shareholders' agreements, as applicable, instrument, release, or other agreement or document created or entered into in connection with this Plan, the rights and obligations arising pursuant to this Plan shall be governed by, and construed and enforced in accordance with the applicable Law, including the Bankruptcy Code and the Bankruptcy Rules; (9) any immaterial effectuating provisions may be interpreted by the Debtors or Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of this Plan all without further notice to or action, order, or approval, of the Bankruptcy Court or any other Entity; (10) unless otherwise specified, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (11) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (12) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (13) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (14) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (15) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (16) references to "Proofs of Claim," "Holders of Claims," "Disputed Claims," and the like shall include "Proofs of Equity Interest," "Holders of Equity Interests," "Disputed Equity Interests," and the like, as applicable; (17) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company Laws; and (18) all references herein to consent, acceptance, or approval may be conveyed by counsel for the respective Person or Entity that have such consent, acceptance, or approval rights, including by electronic mail.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Subject to the requirements of the Restructuring Transactions Memorandum and any other Definitive Document, any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law.

Except to the extent a rule of Law or procedure is supplied by federal Law (including the Bankruptcy Code or the Bankruptcy Rules) and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed, implemented, and enforced in accordance with, the Laws of the State of New York, without giving effect to the principles of conflict of Laws (other than section 5 1401 and section 5 1402 of the New York General Obligations Law); *provided* that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in New York shall be governed by the Laws of the jurisdiction of incorporation or formation of the relevant Debtor or Reorganized Debtor, as applicable.

E. Reference to Monetary Figures.

All references in this Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. Reference to the Debtors or the Reorganized Debtors.

Except as otherwise specifically provided in this Plan to the contrary, references in this Plan to the Debtors or the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

G. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant provision in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order and this Plan, including the Plan Supplement, or the Disclosure Statement, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE CLAIMS, DIP CLAIMS, PRIORITY CLAIMS, AND RESTRUCTURING EXPENSES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Equity Interests set forth in Article III hereof.

A. Administrative Claims.

Except with respect to the Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code, and except to the extent that a Holder of an Allowed Administrative Claim and the Debtors against which such Allowed Administrative Claim is asserted agree to less favorable treatment for such Holder, or such Holder has been paid by any Debtors on account of such Allowed Administrative Claim prior to the Effective Date, each Holder of an Allowed Administrative Claim will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in

accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holder of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Reorganized Debtors, as applicable; or (5) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of this Plan, requests for payment of Administrative Claims must be Filed with the Bankruptcy Court and served on the Debtors by the applicable Administrative Claims Bar Date. **Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date without the need for any objection from the Debtors or the Reorganized Debtors, as applicable, or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.** Objections to such requests, if any, must be Filed with the Bankruptcy Court and served on the Debtors and the requesting party by the Claims Objection Deadline. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with the Bankruptcy Court with respect to an Administrative Claim previously Allowed.

B. *DIP Claims*.

1. DIP Claims.

All DIP Claims shall be deemed Allowed as of the Effective Date in an amount equal to (i) the principal amount outstanding under the DIP Facility on such date, (ii) all interest accrued and unpaid thereon to the date of payment, and (iii) all accrued and unpaid fees, expenses, and non-contingent indemnification obligations payable under the DIP Facility Documents and the DIP Orders.

Except to the extent Holders of an Allowed DIP Claim agree to alternative treatment, on the Effective Date, pursuant to this Plan, each Holder of the Allowed DIP Claim shall receive, in full and final satisfaction of such Allowed DIP Claim, either (i) payment in full in Cash or (ii) its Pro Rata share, calculated as if the DIP Claims were included in the Class 3 1L Convertible Notes Claims, of (A) the Series A Units and (B) the Class C Magnetar Units; *provided that* an election may be made by or on behalf of such Holders to receive Series A-1 Units and Class C-1 Common Units in lieu of Series A Units and Class C Common Units. Contemporaneously with the foregoing payment in full in Cash or receipt of its Pro Rata share of the Series A Units and the Class C Magnetar Units (or, in the alternative, Series A-1 Units and Class C-1 Common Units), the Allowed DIP Claims, the DIP Facility, the DIP Facility Documents, and all related loan documents shall be deemed cancelled, all Liens on property of the Debtors and the Reorganized Debtors arising out of or related to the DIP Facility shall automatically terminate, and all collateral subject to such Liens shall be automatically released, in each case, without further action by the DIP Agent or the DIP Lenders and without further order of the Bankruptcy Court, and all guarantees of the Debtors and Reorganized Debtors arising out of or related to the DIP Claims shall be automatically discharged and released, in each case without further action by the DIP Agent or the DIP Lenders. The DIP Agent and the DIP Lenders shall take all actions to effectuate and confirm such termination, release, and discharge as reasonably requested by the Debtors or the Reorganized Debtors, as applicable.

C. Professional Fee Claims.

1. Final Fee Applications and Payment of Professional Fee Claims.

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in

accordance with the procedures established by the Bankruptcy Court. The Reorganized Debtors shall pay Professional Fee Claims in Cash in the amount the Bankruptcy Court Allows, including from the Professional Fee Escrow Account, as soon as reasonably practicable after such Professional Fee Claims are Allowed, and which Allowed amount shall not be subject to disallowance, setoff, recoupment, subordination, recharacterization, or reduction of any kind, including pursuant to section 502(d) of the Bankruptcy Code. The Debtors and the Reorganized Debtors, as applicable, shall only pay any restructuring fee, opinion fee, transaction fee, or similar success fee if such fee is earned by a Professional, and an application for such fee is filed pursuant to sections 330 and 503(b) of the Bankruptcy Code, and any claim on account of any such fee by an Entity that is not a Professional shall be disallowed, and any Entity that is not a Professional shall be forever barred, estopped, and enjoined from asserting a claim on account of such a fee after the Effective Date. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of this Plan.

2. Professional Fee Escrow Account.

No later than the Effective Date, the Reorganized Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. The amount of Allowed Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Reorganized Debtors from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed. When all such Allowed Professional Fee Claims have been paid in full, any remaining amount in the Professional Fee Escrow Account shall, subject to approval by the Reorganized Debtors, be used to pay any amounts owing to Professionals for services rendered after the Effective Date, or otherwise shall be promptly transferred to the Reorganized Debtors without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Professional Fee Amount.

Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Confirmation Date, and shall deliver such estimate to the Debtors no later than one Business Day before the Effective Date; *provided*, *however*, that such estimates shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's final request for payment of Filed Professional Fee Claims. If a Professional does not provide an estimate, the Debtors or the Reorganized Debtors may estimate the unpaid and unbilled fees and expenses of such Professional; *provided, however,* that such estimate shall not be binding or considered an admission with respect to the fees and expenses of such Professional.

4. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in this Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of this Plan and Consummation incurred by the Debtors. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtor or the Reorganized Debtor, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

D. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash equal to the full amount of its Claim or such other treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

E. *Payment of Statutory Fees and Reporting to the U.S. Trustee.*

All fees payable pursuant to section 1930 of title 28 of the United States Code together with the statutory rate of interest set forth in section 3717 of title 31 of the United States Code, to the extent applicable ("Quarterly Fees") due prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, all Quarterly Fees shall be paid to the U.S. Trustee when due and payable. The Debtors shall File all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Reorganized Debtors shall File with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Each and every one of the Debtors and Reorganized Debtors, as applicable, shall remain obligated to pay Quarterly Fees to the U.S. Trustee until that particular Debtor's Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, dismissed, or closed, whichever occurs first.

F. Payment of Restructuring Expenses.

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date, shall be paid in full in Cash on the Effective Date or as soon as reasonably practicable thereafter (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein, without any requirement to File a fee application with the Bankruptcy Court or for Bankruptcy Court review or approval; *provided* that the foregoing shall be subject to the Debtors' receipt of an invoice with reasonable detail (but without the need for itemized time detail) from the applicable Entity entitled to such Restructuring Expenses. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date, and such estimates shall be delivered to the Debtors at least five Business Days before the anticipated Effective Date; *provided, however*, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On or as soon as practicable after, the Effective Date, invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. In addition, the Debtors and the Reorganized Debtors, as applicable, shall continue to pay, when due and payable in the ordinary course, Restructuring Expenses related to implementation, Consummation, and defense of this Plan, whether incurred before, on, or after the Effective Date in accordance with the applicable engagement letter and solely upon receipt of an invoice from any Entity requesting such Restructuring Expenses with reasonable detail (but without the need for itemized time detail).

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Classification of Claims and Equity Interests.

Except for the Claims addressed in Article II hereof, all Claims and Equity Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Equity Interest, or any portion thereof, is classified in a particular Class only to the extent that any portion of such Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Equity Interest qualifies within the description of such other Classes. A Claim or an Equity Interest also is classified in a particular Class for the purpose of receiving distributions under this Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

This Plan constitutes a separate Plan for each of the Debtors, and the classification of Claims and Equity Interests set forth herein shall apply separately to each of the Debtors (except for the Class 10 Equity Interests, which shall apply only to Appgate). All of the potential Classes for the Debtors are set forth herein. Such groupings shall not affect any Debtor's status as a separate legal Entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal Entities, or cause the transfer of any assets, and, except as otherwise provided by or permitted under this Plan, all Debtors shall continue to exist as separate legal Entities after the Effective Date. Voting tabulations for recording acceptances or rejections of this Plan shall be conducted on a Debtor-by-Debtor basis as set forth herein.

The classification of Claims against and Equity Interests in the Debtors pursuant to this Plan is as follows:

Class	Claims and Equity Interests	Status	Voting Rights
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 3	1L Convertible Notes Claims	Impaired	Entitled to Vote
Class 4	2L Convertible Notes Claims	Impaired	Entitled to Vote
Class 5	3L RCF Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 6	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 8	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)
Class 9	Intercompany Equity Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Not Entitled to Vote (Deemed to Reject)
Class 10	Equity Interests in Appgate	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Equity Interests.

Each Holder of an Allowed Claim or Allowed Equity Interest, as applicable, shall receive under this Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Allowed Equity Interest, as applicable, except to the extent different treatment is agreed to in writing by the Debtors or the Reorganized Debtors, as applicable, and the Holder of such Allowed Claim or Allowed Equity Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Equity Interest, as applicable, shall receive such treatment on the Effective Date (or, if payment is not then due, in accordance with such Claim's or Equity Interest's terms in the ordinary course of business) or as soon as reasonably practicable thereafter.

1. Class 1 – Other Secured Claims

(a) *Classification*: Class 1 consists of all Allowed Other Secured Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment of its Allowed Claim, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction of such Other Secured Claim, at the option of the applicable Debtor or the Reorganized Debtor, either:

(i) payment in full in Cash of its Allowed Other Secured Claim;

(ii) the collateral securing its Allowed Other Secured Claim;

(iii) Reinstatement of its Allowed Other Secured Claim; or

(iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in

accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 1 is Unimpaired under this Plan. Holders of Allowed Claims in Class 1 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

2. Class 2 – Other Priority Claims

(a) *Classification*: Class 2 consists of all Allowed Other Priority Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment of its Allowed Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Other Priority Claim, Cash in an amount equal to such Allowed Other Priority Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

(c) *Voting*: Class 2 is Unimpaired under this Plan. Holders of Allowed Claims in Class 2 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

3. Class 3 – 1L Convertible Notes Claims

(a) *Classification*: Class 3 consists of all Allowed 1L Convertible Notes Claims against any Debtor.

(b) *Treatment*:

(i) On the Effective Date, each Holder of an Allowed 1L Convertible Notes Claim will receive, in full and final satisfaction of such 1L Convertible Notes Claim, such Holder's Pro Rata share, calculated as if the DIP Claims were included in the Class 3 1L Convertible Notes Claims, of (A) the Series A Units and (B) the Class C Magnetar Units.

(ii) An election may be made prior to the Effective Date by or on behalf of a Holder of 1L Convertible Notes to receive Series A-1 Units and Class C-1 Common Units, which Series A-1 Units and Class C-1 Common Units will provide the same economic benefit to such Holder as such Holder's Pro Rata share of Series A Units and Class C Common Units distributable pursuant to Article III.B.2(b) above.

(c) *Voting*: Class 3 is Impaired under this Plan and Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject this Plan.

4. Class 4 – 2L Convertible Notes Claims

(a) *Classification*: Class 4 consists of all Allowed 2L Convertible Notes Claims against any Debtor.

(b) *Treatment*: On the Effective Date, each Holder of an Allowed 2L Convertible Notes Claim will receive, in full and final satisfaction of such 2L Convertible Notes Claim, (i) the Series B Units and (ii) the Class C AGF Units.

(c) *Voting*: Class 4 is Impaired under this Plan and Holders of Allowed Claims in Class 4 are entitled to vote to accept or reject this Plan.

5. Class 5 – 3L RCF Claims

(a) *Classification*: Class 5 consists of any 3L RCF Claims against any Debtor.

(b) *Treatment*: On the Effective Date, all 3L RCF Claims shall be discharged, cancelled, released, and extinguished and will be of no further force or effect, and Holders of the 3L RCF Claims shall not receive or retain any distribution under this Plan on account of such 3L RCF Claims.

(c) *Voting*: Class 5 is Impaired under this Plan. Holders of Allowed Claims in Class 5 are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims

(a) *Classification*: Class 6 consists of all Allowed General Unsecured Claims against any Debtor.

(b) *Treatment*: Each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such General Unsecured Claim, either:

(i) Reinstatement of such Allowed General Unsecured Claim pursuant to section 1124 of the Bankruptcy Code; or

(ii) payment in full in Cash on (A) the Effective Date or (B) the date due in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Unsecured Claim.

(c) *Voting:* Class 6 is Unimpaired under this Plan. Holders of Allowed Claims in Class 6 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

7. Class 7 – Section 510(b) Claims

(a) *Classification*: Class 7 consists of all Section 510(b) Claims.

(b) *Allowance*: Notwithstanding anything to the contrary herein, a Section 510(b) Claim, if any Claim exists, may only become Allowed by Final Order of the Bankruptcy Court.

(c) *Treatment*: On the Effective Date, all Section 510(b) Claims will be cancelled, released, discharged, extinguished, and will be of no further force or effect, and Holders of Section 510(b) Claims will not receive any distribution on account of such Section 510(b) Claims.

(d) *Voting*: Class 7 is Impaired under this Plan. Holders of Allowed Claims in Class 7 are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

8. Class 8 – Intercompany Claims

(a) *Classification:* Class 8 consists of all Intercompany Claims.

(b) *Treatment:* Each Allowed Intercompany Claim shall be, at the option of the applicable Debtor or Reorganized Debtor, either:

(i) Reinstated; or

(ii) set off, settled, discharged, contributed, cancelled, released without any distribution on account of such Intercompany Claims, or otherwise addressed at the option of the Reorganized Debtors.

The Plan and distributions contemplated thereby constitute a global settlement of any and all Intercompany Claims and Causes of Action by and between any of the Debtors that may exist as of the Effective Date. This Plan shall be considered a settlement of the Intercompany Claims pursuant to Bankruptcy Rule 9019.

(c) *Voting:* Class 8 is Unimpaired if the Allowed Intercompany Claims in Class 8 are Reinstated or Impaired if the Allowed Intercompany Claims in Class 8 are cancelled. Holders of Allowed Intercompany Claims in Class 8 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

9. Class 9 – Intercompany Equity Interests

(a) *Classification:* Class 9 consists of all Intercompany Equity Interests.

(b) *Treatment:* Each Allowed Intercompany Equity Interest shall be, at the option of the applicable Debtor or the Reorganized Debtor, either:

(i) Reinstated; or

(ii) set off, settled, discharged, contributed, cancelled, and released without any distribution on account of such Intercompany Equity Interests, or otherwise addressed at the option of the Reorganized Debtors.

(c) *Voting*: Class 9 is Unimpaired if the Allowed Intercompany Equity Interests in Class 9 are Reinstated or Impaired if the Allowed Intercompany Equity Interests are cancelled. Holders of Allowed Equity Interests in Class 9 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

10. Class 10 – Equity Interests in Appgate

(a) *Classification*: Class 10 consists of all Equity Interests in Appgate.

(b) *Treatment*: On the Effective Date, all Equity Interests in Appgate shall be discharged, cancelled, released, and extinguished under this Plan, and each Holder of an existing Equity Interest in Appgate shall not receive or retain any distribution, property, or other value under this Plan on account of such existing Equity Interests in Appgate.

(c) *Voting*: Class 10 is Impaired under this Plan. Holders of Class 10 Equity Interests in Appgate are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject this Plan.

C. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in this Plan, nothing under this Plan or the Plan Supplement shall affect the rights of the Debtors or the Reorganized Debtors, as applicable, regarding any Unimpaired Claims, including, all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

D. Elimination of Vacant Classes.

Any Class of Claims or Equity Interests that does not have a Holder of an Allowed Claim or Allowed Equity Interest or a Claim or Equity Interest temporarily Allowed by the Bankruptcy Court as of the date of the Combined Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims or Equity Interests eligible to vote and no Holders of Claims or Equity Interests eligible to vote in such Class votes to accept or reject this Plan, the Holders of such Claims or Equity Interests in such Class shall be deemed to have accepted this Plan.

F. Intercompany Equity Interests.

To the extent Reinstated under this Plan, distributions on account of Intercompany Equity Interests are not being received by Holders of such Intercompany Equity Interests on account of their Intercompany Equity Interests but for the purposes of administrative convenience and due to the importance of maintaining the prepetition corporate structure, for the ultimate benefit of the Holders of the New Equity Interests in exchange for the Debtors' and Reorganized Debtors' agreement under this Plan to make certain distributions to the Holders of Allowed Claims. For the avoidance of doubt, to the extent Reinstated pursuant to the Plan, on and after the Effective Date, all Intercompany Equity Interests shall be owned by the same Reorganized Debtor that corresponds with the Debtor that owned such Intercompany Equity Interests immediately prior to the Effective Date.

G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by one or more of the Classes entitled to vote pursuant to Article III.B of this Plan. The Debtors shall seek Confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Equity Interests. The Debtors reserve the right to modify this Plan in accordance with Article X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Equity Interests to render such Class of Claims or Equity Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

H. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Equity Interests, or any Class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

I. Subordinated Claims and Equity Interests.

The allowance, classification, and treatment of all Allowed Claims and Allowed Equity Interests and the respective distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors, or the Reorganized

Debtors, as applicable, reserve the right to re-classify any Allowed Claim or Allowed Equity Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. General Settlement of Claims and Equity Interests.

To the greatest extent permissible under the Bankruptcy Code, and in consideration for the classification, distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims, Equity Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to this Plan. To the greatest extent permissible under the Bankruptcy Code, this Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Equity Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable and in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests. Subject to Article VI hereof, all distributions made to Holders of Allowed Claims and Allowed Equity Interests, as applicable, in any Class are intended to be, and shall be, final.

B. Restructuring Transactions.

On or before the Effective Date, or as soon as reasonably practicable thereafter, the Debtors or Reorganized Debtors, as applicable, shall consummate the Restructuring Transactions and are authorized in all respects to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan that are consistent with and pursuant to the terms and conditions of this Plan, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, formation, organization, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of this Plan, the Plan Supplement, and the RSA; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan, the Plan Supplement, and the RSA and having other terms to which the applicable Entities may agree; (3) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state Law, including any applicable Corporate Governance Documents; (4) the issuance and distribution of the Series A Units, Series A-1 Units, Series B Units, and Class C Units, as set forth in this Plan; (5) adoption of the Management Incentive Plan; (6) such other transactions that are required to effectuate the Restructuring Transactions, including any transactions set forth in the Restructuring Transactions Memorandum; and (7) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable Law in connection with this Plan.

The Confirmation Order shall, and shall be deemed to, pursuant to both sections 1123 and 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan.

C. The Reorganized Debtors.

On the Effective Date, the New Board shall be established in accordance with the terms of the New Limited Liability Company Agreement, and each Reorganized Debtor shall adopt its Corporate Governance Documents. The Reorganized Debtors shall be authorized to adopt any other agreements, documents, and instruments and to take any other actions contemplated under this Plan as necessary to consummate this Plan. Cash payments to be made pursuant to this Plan will be made by the Debtors or the Reorganized Debtors, as applicable. The Debtors and Reorganized Debtors will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Debtors or the Reorganized Debtors, as applicable, to satisfy their obligations under this Plan. Except as set forth herein or as otherwise provided for in the Restructuring Transactions Memorandum, any changes

in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and will not violate the terms of this Plan.

From and after the Effective Date, the Reorganized Debtors shall have the right and authority without further order of the Bankruptcy Court, to raise additional capital and obtain additional financing, subject to, the terms of the Corporate Governance Documents, as the boards of directors or boards of managers, as applicable, of the applicable Reorganized Debtors deem appropriate.

D. Sources of Consideration for Plan Distributions.

The Debtors and the Reorganized Debtors, as applicable, shall fund distributions under this Plan with (1) Cash on hand as of the Effective Date, including the proceeds from the DIP Facility, and (2) the New Equity Interests. Each distribution and issuance referred to in this Article VI of this Plan shall be governed by the terms and conditions set forth in this Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The issuance, distribution, or authorization, as applicable, of certain Securities in connection with this Plan, including the New Equity Interests, will be exempt from SEC registration, as described more fully in Article IV.M hereof.

1. Use of Cash.

The Debtors or Reorganized Debtors, as applicable, shall use Cash on hand and proceeds of the DIP Facility to fund distributions to certain Holders of Allowed Claims, consistent with the terms of this Plan.

2. New Equity Interests.

(a) New Equity Interests.

The Reorganized Debtors set forth in the Restructuring Transactions Memorandum shall be authorized to issue a certain number of New Equity Interests pursuant to its Corporate Governance Documents. The issuance of the New Equity Interests shall be authorized without the need for any further corporate action. On the Effective Date, the New Equity Interests shall be issued and distributed as provided for in the Restructuring Transactions Memorandum pursuant to, and in accordance with, this Plan.

All of the shares of New Equity Interests issued pursuant to this Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance referred to in Article VI hereof shall be governed by the terms and conditions set forth in this Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, including the Corporate Governance Documents, which terms and conditions shall bind each Entity receiving such distribution or issuance. Any Entity's acceptance of New Equity Interests shall be deemed as its agreement to the Corporate Governance Documents, as the same may be amended or modified from time to time following the Effective Date in accordance with their terms.

(b) Series A-1 Units and Class C-1 Units.

An election may be made prior to the Effective Date by or on behalf of a DIP Lender or a 1L Convertible Noteholder to receive Series A-1 Units and Class C-1 Common Units in lieu of Series A Units and Class C Common Units, which Series A-1 Units and Class C-1 Common Units will provide the same economic benefit to such Holder as such Holder's Pro Rata share of Series A Units and Class C Common Units distributable under this Plan.

(c) Series A Units Issuance.

Further, following the Effective Date, the Series A Holders shall, in their discretion, after consultation with the Debtors, provide, or commit to provide, incremental liquidity needed to fund cash shortfalls of the Reorganized Debtors following the Effective Date. Any incremental liquidity amount and accompanying documentation, including

any commitment to purchase additional Series A Units or Series A-1 Units, shall be (a) filed as part of the Plan Supplement, and (b) subject to the preemptive rights set forth in Section 3.04 of the New Limited Liability Company Agreement.

E. Exemption from Registration Requirements.

1. The New Equity Interests.

All New Equity Interests issued under this Plan will be exempt from, among other things, the registration and prospectus delivery requirements under the Securities Act or any similar federal, state, or local Laws in reliance upon section 1145 of the Bankruptcy Code to the maximum extent permitted and applicable and, to the extent that reliance on such section is either not permitted or not applicable, including with respect to an Entity that is an "underwriter" as defined in section 1145(b) of the Bankruptcy Code relating to the definition of underwriter in section 2(a)(11) of the Securities Act, the exemption set forth in section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder, and/or Regulation S under the Securities Act (or another applicable exemption from the registration requirements of the Securities Act). All New Equity Interests issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will be considered "restricted Securities" and may not be transferred except pursuant to an effective registration statement under the Securities Act or an available exemption therefrom.

Securities issued in reliance upon section 1145 of the Bankruptcy Code (to the fullest extent permitted and available) (a) are exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable Law requiring registration prior to the offering, issuance, distribution, or sale of Securities, to the maximum extent possible, (b) are not "restricted Securities" as defined in Rule 144(a)(3) under the Securities Act, and (c) are freely tradeable and transferable by any Holder thereof that, at the time of transfer, (i) is not an "affiliate" of the Reorganized Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within 90 days of such transfer, (iii) has not acquired such Securities from an "affiliate" within one year of such transfer, and (iv) is not an Entity that is an "underwriter" (as defined in section 2(a)(11) of the Securities Act). The offering, issuance, distribution, and sale of any Securities in accordance with section 1145 of the Bankruptcy Code shall be made without registration under the Securities Act or any similar federal, state, or local Law in reliance on section 1145(a) of the Bankruptcy Code.

The issuance of the New Equity Interests or any other Securities shall not constitute an invitation or offer to sell, or the solicitation of an invitation or offer to buy, any Securities in contravention of any applicable Law in any jurisdiction. No action has been taken, nor will be taken, in any jurisdiction that would permit a public offering of any of the New Equity Interests (other than Securities issued pursuant to section 1145 of the Bankruptcy Code) in any jurisdiction where such action for that purpose is required.

Persons who acquire the New Equity Interests pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder will hold "restricted Securities." Such persons include the participants under the Management Incentive Plan who receive New Equity Interests of New Appgate Holdings. Resales of such restricted Securities would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable Law. Holders of restricted Securities would, however, be permitted to resell New Equity Interests without registration if they are able to comply with the applicable provisions of Rule 144 or Rule 144A under the Securities Act (if available) or any other exemption from registration under the Securities Act, or if such Securities are registered with the Securities and Exchange Commission.

F. Corporate Existence.

Except as otherwise provided in this Plan, the Plan Supplement, the Confirmation Order, or any agreement, instrument, or other document incorporated therein, each Debtor shall continue to exist after the Effective Date as a separate corporate Entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable Law in the jurisdiction in which such Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and by-laws (or other formation documents) are amended under this Plan or otherwise,

in each case, consistent with this Plan, and to the extent such documents are amended in accordance therewith, such documents are deemed to be amended pursuant to this Plan and require no further action or approval (other than any requisite filings, approvals, or consents required under applicable state, provincial, or federal Law). After the Effective Date, the respective certificate of incorporation and bylaws (or other formation documents) of one or more of the Reorganized Debtors may be amended or modified on the terms therein without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. After the Effective Date, one or more of the Reorganized Debtors may be disposed of, dissolved, wound down, or liquidated without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

G. Vesting of Assets in the Reorganized Debtors.

Except as otherwise provided in this Plan, the Plan Supplement, the Confirmation Order, or any agreement, instrument, or other document incorporated herein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to this Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in this Plan, the Plan Supplement, the Confirmation Order, or any agreement, instrument, or other document incorporated herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules. For the avoidance of doubt, no Reorganized Debtor shall be treated as being liable on any Claim that is discharged pursuant to this Plan.

H. Cancellation of Existing Agreements and Equity Interests.

On the Effective Date, except to the extent otherwise provided in this Plan or other Definitive Documents, as applicable, all notes, instruments, certificates, and other documents evidencing Claims (other than those Reinstated Claims) or Equity Interests in Appgate, including credit agreements and note purchase agreements shall, be cancelled, and all present and future obligations and liabilities, actions, suits, accounts or demands, covenants, and indemnities (both actual and contingent), under or in connection with the 1L Convertible NIA, 2L Convertible NIA, and the 3L RCF Credit Agreement of the Debtors or the Reorganized Debtors, as applicable, and any non-Debtor Affiliates thereunder, or in any way related thereto, shall be deemed satisfied in full, cancelled, discharged, and of no force or effect, and the Agents/Trustees shall be released from all duties and obligations thereunder.

I. Corporate Action.

Upon the Effective Date, all actions contemplated under this Plan shall be deemed authorized and approved in all respects, including: (1) adoption or assumption, as applicable, of the Compensation and Benefits Programs; (2) selection of the directors, officers, or managers for the Reorganized Debtors in accordance with the New Limited Liability Company Agreement; (3) the issuance and distribution of the New Equity Interests; (4) implementation of the Restructuring Transactions; (5) all other actions contemplated under this Plan (whether to occur before, on, or after the Effective Date); (6) adoption of the Corporate Governance Documents; (7) the assumption or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (8) adoption of the Management Incentive Plan by the New Board; and (9) all other acts or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions contemplated by this Plan (whether to occur before, on, or after the Effective Date). All matters provided for in this Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate, partnership, limited liability company, or other governance action required by the Debtors or the Reorganized Debtors, as applicable, in connection with this Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Security holders, directors, officers, or managers of the Debtors or the Reorganized Debtors, as applicable. On or, as applicable, prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, Securities, and instruments contemplated under this Plan (or necessary or desirable to effect the transactions contemplated under this Plan) in the name of and on behalf of the Reorganized Debtors, including the New Equity Interests, the Corporate Governance Documents, any other Definitive Documents, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.I shall be effective notwithstanding any requirements under non-bankruptcy Law.

J. Corporate Governance Documents.

On or immediately prior to the Effective Date, the Corporate Governance Documents shall be adopted or amended in a manner consistent with the terms and conditions set forth in the New Limited Liability Company Agreement, as applicable, and as may be necessary to effectuate the transactions contemplated by this Plan. To the extent required under this Plan or applicable non-bankruptcy, each of the Reorganized Debtors will file its Corporate Governance Documents with the Secretaries of State and/or other applicable authorities in its respective state, province, or country of incorporation in accordance with the corporate Laws of the respective state, province, or country of incorporation to the extent such filing is required for each such document. The Corporate Governance Documents will prohibit the issuance of non-voting Equity Securities to the extent required under section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, each Reorganized Debtor may amend and restate its constituent and governing documents as permitted by the Laws of its jurisdiction of formation and the terms of such documents.

On the Effective Date, New Appgate Holdings shall enter into and deliver the New Limited Liability Company Agreement to each Holder of New Equity Interests, which shall become effective and binding in accordance with their terms and conditions upon the parties thereto without further notice to or order of the Bankruptcy Court, act or action under applicable Law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Holders of New Equity Interests shall be deemed to have executed the New Limited Liability Company Agreement and be parties thereto, without the need to deliver signature pages thereto.

K. New Limited Liability Company Agreement.

From and after the Effective Date, all Holders of New Equity Interests shall be subject to the terms and conditions of the New Limited Liability Company Agreement.

L. Directors and Officers of the Reorganized Debtors.

As of the Effective Date, the term of the current members of the board of directors or other Governing Body of Appgate shall expire, and the members for the initial term of the New Board shall be appointed in accordance with the Corporate Governance Documents. The New Board shall consist of [five managers] as designated in accordance with the Restructuring Term Sheet and New Limited Liability Company Agreement, as applicable. The initial members of the New Board will be identified in the Plan Supplement, to the extent known at the time of filing. Each such member and officer of the Reorganized Debtors shall serve from and after the Effective Date pursuant to the terms of the Corporate Governance Documents and other constituent documents of the Reorganized Debtors.

M. Certain Securities Law Matters.

Pursuant to section 1145 of the Bankruptcy Code, or, to the extent that section 1145 of the Bankruptcy Code is either not permitted or not applicable, section 4(a)(2) of the Securities Act, Regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration, the offering, issuance, and distribution of the New Equity Interests as contemplated herein shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable U.S. federal, state, or local laws requiring registration prior to the offering, issuance, distribution, or sale of Securities.

The shares of New Equity Interests to be issued under this Plan on account of Allowed Claims in accordance with, and pursuant to, section 1145 of the Bankruptcy Code will be freely transferable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, compliance with any applicable state or foreign Securities Laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; and (b) any restrictions on the transferability of such New Equity Interests in the Corporate Governance Documents.

The shares of New Equity Interests that may be issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration will be considered "restricted Securities," will bear customary

legends and transfer restrictions, and may not be transferred except pursuant to an effective registration statement or under an available exemption from the registration requirements of the Securities Act.

N. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under this Plan or pursuant to (1) the issuance, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Reorganized Debtors, including the New Equity Interests, (2) the Restructuring Transactions, (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means, (4) the making, assignment, or recording of any lease or sublease, or (6) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, personal property transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

O. *Private Company.*

The Reorganized Debtors shall not have any class of Securities listed on a national securities exchange and shall make commercially reasonable efforts to take the steps necessary to be a private company without Exchange Act reporting obligations upon emergence or as soon as practicable thereafter in accordance with and to the extent permitted by the Exchange Act.

P. Director and Officer Liability Insurance.

Notwithstanding anything in this Plan to the contrary, the Reorganized Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' foregoing assumption of each of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in this Plan, Confirmation of this Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under this Plan as to which no Proof of Claim need be Filed.

Q. Management Incentive Plan.

As soon as reasonably practicable following the Effective Date, the New Board shall adopt the Management Incentive Plan, to be designed and adopted by the New Board following the Effective Date, to be used to incentivize and compensate employees, directors, consultants, and other service providers, which will include (1) the ability to grant incentive equity awards representing up to 15 percent of the Class C Units (all of which shall be Class C Profits Interests) on a fully diluted basis and (2) other terms and conditions customary for similar equity plans as determined by the New Board in its sole discretion (including, with respect to participants, allocation of awards and vesting); *provided* that any Management Incentive Plan shall provide that distributions to Class C Profits Interests Holders in respect of any authorized but unissued, unvested, or forfeited Class C Profits Interests shall be distributed in accordance with the distribution allocations provided in the New Limited Liability Company Agreement.

R. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights to commence, prosecute, or settle such retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date or any other provision of this Plan to the contrary, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in this Plan, including in Article VIII hereof, which shall be deemed released and waived by the Debtors and the Reorganized Debtors as of the Effective Date.

The Reorganized Debtors may pursue such retained Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available retained Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all retained Causes of Action against any Entity, except as otherwise expressly provided in this Plan.** The Reorganized Debtors may settle any such retained Cause of Action without further notice to or action, order, or approval of the Bankruptcy Court. If there is any dispute between the Reorganized Debtors and the Entity against whom the Reorganized Debtors are asserting the retained Cause of Action regarding the inclusion of any Cause of Action in the Schedule of retained Causes of Action that remain unresolved for 30 days, such objection shall be resolved by the Bankruptcy Court. Unless any retained Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all retained Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such retained Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to this Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any retained Causes of Action that a Debtor may hold against any Entity shall vest in the corresponding Reorganized Debtor, except as otherwise expressly provided in this Plan. The Reorganized Debtors, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such retained Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such retained Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption of Executory Contracts and Unexpired Leases.

Each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease previously expired or terminated pursuant to its own terms. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions and assignments.

Except as otherwise specifically set forth herein, assumptions of Executory Contracts and Unexpired Leases pursuant to this Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to this Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall revest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of this Plan or any order of the Bankruptcy Court authorizing and providing for its assumption. Any motions to assume Executory Contracts or Unexpired Leases

pending on the Effective Date shall be subject to approval by a Final Order on or after the Effective Date but may be withdrawn, settled, or otherwise prosecuted by the Reorganized Debtors.

Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to this Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

To the extent any provision of the Bankruptcy Code or the Bankruptcy Rules requires the Debtors to assume or reject an Executory Contract or Unexpired Lease, such requirement shall be satisfied if the Debtors make an election to assume or reject such Executory Contract or Unexpired Lease prior to the deadline set forth by the Bankruptcy Code or the Bankruptcy Rules, as applicable, regardless of whether or not the Bankruptcy Court has actually ruled on such proposed assumption or rejection prior to such deadline.

B. Indemnification Obligations.

Subject to the treatment of Section 510(b) Claims under this Plan, and to the fullest extent permitted under applicable Law (including being subject to the limitations of the Delaware General Corporation Law, including the limitations contained therein on a corporation's ability to indemnify officers and directors), all indemnification provisions in place as of the Effective Date (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Company Parties, as applicable, shall be Reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Company Parties than the indemnification provisions in place prior to the Effective Date; *provided* that nothing herein shall expand any of the Debtors' indemnification obligations in place as of the Petition Date or constitute a finding or conclusion that any party that may seek indemnification is entitled to indemnification under the terms of such indemnification provisions or is intended to effectuate the survival of any indemnification obligations for any party other than the current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of, or acting on behalf of, the Company Parties. For the avoidance of doubt, following the Effective Date, the Reorganized Debtors will not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies (including any "tail policy"), and all members, managers, directors, and officers of the Company Parties who served in such capacity at any time prior to the Effective Date or any other individuals covered by such insurance policies, will be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such members, managers, directors, officers, or other individuals remain in such positions after the Effective Date.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as reasonably practicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure costs that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be Filed with the Bankruptcy

Court on or before 30 days after the Effective Date. Any such request that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor or Reorganized Debtor, without the need for any objection by the Debtors or Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure costs shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the applicable Cure costs; *provided*, *however,* that nothing herein shall prevent the Reorganized Debtors from paying any Cure costs despite the failure of the relevant counterparty to File such request for payment of such Cure costs. The Reorganized Debtors also may settle any Cure costs without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under this Plan must be Filed with the Bankruptcy Court on or before this Plan Objection Deadline. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Combined Hearing or such other setting as requested by the Debtors for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is any dispute regarding any Cure costs, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of any Cure costs shall occur as soon as reasonably practicable after (1) entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment) or (2) as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. The Debtors and the Reorganized Debtors, as applicable, reserve the right at any time to move to reject any Executory Contract or Unexpired Lease based upon the existence of any such unresolved dispute. If the Bankruptcy Court determines that the Allowed Cure cost with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the Schedule of Proposed Cure Amounts, the Debtors shall have the right to reject such Executory Contract or Unexpired Lease, in which case such Executory Contract or Unexpired Lease will be deemed rejected as of the Effective Date subject to the applicable counterparty's right to object to such rejection.

Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise and payment of any applicable Cure pursuant to this Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court**.

To the extent applicable, rejection of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any applicable non-bankruptcy Law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations with respect to goods previously purchased by the Debtors pursuant to rejected Executory Contracts or Unexpired Leases (if any).

D. Insurance Policies.

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under this Plan. Unless otherwise provided in this Plan, on the Effective Date, (1) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims, including all D&O Liability Insurance Policies, and (2) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

E. Reservation of Rights.

Nothing contained in this Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Reorganized Debtors have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease under this Plan.

F. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. Employee Compensation and Benefits.

1. Compensation and Benefits Programs.

Except as otherwise set forth herein, on the Effective Date, the Debtors or the Reorganized Debtors, as applicable, shall assume all Employment Agreements, including the Employment Agreements with the Executive Officers, which shall thereafter be assigned to New Appgate Holdings. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

Subject to the provisions of this Plan, all Compensation and Benefits Programs shall be treated as Executory Contracts under this Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code, except for: (a) all employee equity or equity-based incentive plans, and any provisions set forth in the Compensation and Benefits Programs that provide for rights to acquire Equity Interests in any of the Debtors, which shall not constitute or be deemed to constitute Executory Contracts and shall be deemed terminated on the Effective Date; (b) Compensation and Benefits Programs that have been rejected pursuant to an order of a Bankruptcy Court; and (c) Compensation and Benefits Programs that, as of the entry of the Confirmation Order, have been specifically waived by the beneficiaries of any employee benefit plan or contract.

A counterparty to a Compensation and Benefits Program assumed pursuant to this Plan shall have the same rights under such Compensation and Benefits Program as such counterparty had thereunder immediately prior to such assumption (unless otherwise agreed by such counterparty and the applicable Reorganized Debtor(s)); *provided*, *however*, that any assumption of Compensation and Benefits Programs pursuant to this Plan or any of the Restructuring Transactions shall not trigger or be deemed to trigger any change of control, immediate vesting, termination, or similar provisions therein.

2. Workers' Compensation Programs.

As of the Effective Date, except as set forth in the Plan Supplement, the Debtors and the Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation Laws in states in which the Reorganized Debtors operate; and (b) the Debtors' written contracts, agreements, agreements of indemnity, self-insured workers' compensation bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance. All Proofs of Claims on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that nothing in this Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable Law, including non-bankruptcy Law with respect to any such contracts, agreements, policies, programs, and plans; *provided, further*, that nothing herein shall be deemed to impose any obligations on the Debtors in addition to what is provided for under applicable non-bankruptcy Law.

H. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or the Reorganized Debtor liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

Unless otherwise provided in this Plan, on the Effective Date (or, if a Claim or Equity Interest is not an Allowed Claim or Allowed Equity Interest on the Effective Date, on the date that such Claim becomes an Allowed Claim or Allowed Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Allowed Equity Interest, as applicable, shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests, as applicable, in the applicable Class. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Equity Interests, distributions on account of any such Disputed Claims or Disputed Equity Interests shall be made pursuant to the provisions set forth in Article VII hereof. Except as otherwise provided in this Plan, Holders of Claims or Equity Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in this Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

B. Disbursing Agent.

All distributions under this Plan shall be made by the Disbursing Agent on the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other Security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtors.

C. Rights and Powers of Disbursing Agent.

1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent (including the Agents/Trustees) on or after the Effective Date (including taxes), and any reasonable compensation and expense reimbursement Claims (including reasonable attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. If a Claim, other than one based on a Security that is traded on a recognized Securities exchange, is transferred twenty or fewer days before the Distribution Record Date, the Disbursing Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

2. Delivery of Distributions in General.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Equity Interests, as applicable, as of the Distribution Record Date, or, if applicable, to such Holder's designee, as appropriate: (a) at the address for each such Holder as indicated on the Debtors' records as of the Distribution Record Date (or of a designee designated by the 1L Convertible Noteholders); (b) to the signatory set forth on any Proof of Claim or Proof of Equity Interest Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim or Proof of Equity Interest is Filed or if the Debtors have not been notified in writing of a change of address); (c) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtors or the applicable Disbursing Agent, as appropriate, after the date of any related Proof of Claim or Proof of Equity Interest; or (d) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf; *provided* that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors.

3. Minimum Distributions.

No fractional shares of New Equity Interests shall be distributed, and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to this Plan on account of an Allowed Claim or Allowed Equity Interest, as applicable, would otherwise result in the issuance of a number of shares of New Equity Interests that is not a whole number, the actual distribution of shares of New Equity Interests shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized shares of New Equity Interests to be distributed under this Plan shall be adjusted as necessary to account for the foregoing rounding.

4. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder of an Allowed Claim is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time such distribution shall be made to such Holder on the next Distribution Date without interest. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes deliverable, or such distribution reverts to the Reorganized Debtors or is cancelled pursuant to this Article VI.D.4, and shall not be supplemented with any interest, dividends, or other accruals of any kind.

Any distribution under this Plan that is an Unclaimed Distribution or remains undeliverable for a period of six months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution or undeliverable distribution shall revest in the applicable Reorganized Debtor automatically (and without need for a further order by the Bankruptcy Court, notwithstanding any applicable federal, provincial, or estate escheat, abandoned, or unclaimed property Laws to the contrary) and, to the extent such Unclaimed Distribution is comprised of New Equity Interests, such New Equity Interests shall be cancelled. Upon such revesting, the Claim of the Holder or its successors with respect to such property shall be cancelled, released, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed

property Laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary. The Disbursing Agent shall adjust the distributions of New Equity Interests to reflect any such cancellation.

E. Surrender and Cancelled Instruments or Securities.

On the Effective Date, or as soon as reasonably practicable thereafter, each Holder (and the applicable Agents for such Holder, including the Agents/Trustees) of a certificate or instrument evidencing a Claim or an Equity Interest that has been cancelled in accordance with Article IV.H hereof, shall be deemed to have surrendered such certificate or instrument to the Disbursing Agent. Such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and any non-Debtor Affiliates, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties (other than the non-Debtor Affiliates) in respect of one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Equity Interest, which all continue in effect for the purposes of allowing Holders to receive distributions under this Plan, charging Liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary in this Plan, the foregoing shall not apply to certificates or instruments evidencing Claims that are Unimpaired under this Plan.

F. Manner of Payment.

Except as otherwise provided in this Plan, the Plan Supplement, or any agreement, instrument, or other document incorporated in this Plan or the Plan Supplement, all distributions of the New Equity Interests to the Holders of the applicable Allowed Claims or Allowed Equity Interests, in each case if any, under this Plan shall be made by the Disbursing Agent on behalf of the Debtors or Reorganized Debtors, as applicable.

All distributions of Cash to the Holders of the applicable Allowed Claims or Allowed Equity Interests, in each case if any, under this Plan shall be made by the Disbursing Agent on behalf of the applicable Debtor or Reorganized Debtor.

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

G. Compliance with Tax Requirements.

In connection with this Plan, to the extent applicable, any applicable withholding or reporting agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, any applicable withholding or reporting agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors and the Reorganized Debtors reserve the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

H. Allocations.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. No Postpetition Equity Interest on Claims.

Unless otherwise specifically provided for in the DIP Orders, this Plan, or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy Law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to interest

accruing on or after the Petition Date on any such prepetition Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

J. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than United States dollars shall be automatically deemed converted to the equivalent United States dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal (National Edition)*, on the Petition Date.

K. Setoffs and Recoupment.

Except as expressly provided in this Plan or Plan Supplement, each Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan Distributions to be made on account of any Allowed Claim, any and all Claims, rights, and Causes of Action that such Reorganized Debtor may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Reorganized Debtor(s) and the Holder of the Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided* that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Reorganized Debtor or its successor of any and all Claims, rights, and Causes of Action that such Reorganized Debtor or its successor may possess against the applicable Holder. In no event shall any Holder of Claims against, or Equity Interests in, the Debtors be entitled to recoup any such Claim or Equity Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XII.F hereof on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

L. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within 5 Business Days of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the amount of such Claim as of the date of any such distribution under this Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 5 Business Day grace period specified above until the amount is fully repaid.

2. Claims Payable by Third Parties.

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy or is found liable for satisfying in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies.

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary contained herein (including Article III of this Plan), nothing contained in this Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers, under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Disputed Claims Process.

Notwithstanding section 502(a) of the Bankruptcy Code, and in light of the Unimpaired status of all Allowed General Unsecured Claims under this Plan and as otherwise required by this Plan, Holders of Claims need not File Proofs of Claim, and the Reorganized Debtors and the Holders of Claims shall determine, adjudicate, and resolve any disputes over the validity and amounts of such Claims in the ordinary course of business as if the Chapter 11 Cases had not been commenced except that (unless expressly waived pursuant to this Plan) the Allowed amount of such Claims shall be subject to, the limitations or maximum amounts permitted by the Bankruptcy Code, including sections 502 and 503 of the Bankruptcy Code, to the extent applicable. All Proofs of Claim Filed in these Chapter 11 Cases shall be considered objected to and Disputed without further action by the Debtors. Upon the Effective Date, all Proofs of Claim Filed against the Debtors, regardless of the time of filing, and including Proofs of Claim Filed after the Effective Date, shall be deemed withdrawn and expunged, other than as provided below. Notwithstanding anything in this Plan to the contrary, disputes regarding the amount of any Cure pursuant to section 365 of the Bankruptcy Code and Claims that the Debtors seek to have determined by the Bankruptcy Court, shall in all cases be determined by the Bankruptcy Court.

For the avoidance of doubt, there is no requirement to File a Proof of Claim (or move the Bankruptcy Court for allowance) to be an Allowed Claim, as applicable, under this Plan, except to the extent a Claim arises on account of rejection of an Executory Contract or Unexpired Lease in accordance with Article V.C. Notwithstanding the foregoing, Entities must File Cure objections as set forth in Article V.C of this Plan to the extent such Entity disputes the amount of the Cure paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty. **Except as otherwise provided herein, all Proofs of Claim Filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

B. Allowance of Claims.

After the Effective Date and subject to the terms of this Plan, each of the Reorganized Debtors shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Equity Interest immediately prior to the Effective Date. The Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be Allowed under applicable non-bankruptcy Law.

C. Claims Administration Responsibilities.

Except as otherwise specifically provided in this Plan, after the Effective Date, the Reorganized Debtors shall have the sole authority: (1) to File, withdraw, or litigate to judgment, objections to Claims or Equity Interests; (2) to settle or compromise any Disputed Claim or Equity Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Equity Interest, including the Causes of Action retained pursuant to this Plan.

Notwithstanding the foregoing, the Debtors and Reorganized Debtors shall be entitled to dispute and/or otherwise object to any General Unsecured Claim in accordance with applicable non-bankruptcy Law. If the Debtors or Reorganized Debtors, as applicable, dispute any General Unsecured Claim, such dispute shall be determined, resolved, or adjudicated, as the case may be, in the manner as if the Chapter 11 Cases had not been commenced. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all Claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

D. *Estimation of Claims and Interests*

Before or after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim or Disputed Equity Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Equity Interest, including during the litigation of any objection to any Claim or Equity Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in this Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Equity Interest, that estimated amount shall constitute a maximum limitation on such Claim or Equity Interest for all purposes under this Plan (including for purposes of distributions), and the relevant Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Equity Interest.

E. Adjustment to Claims or Equity Interests without Objection.

Any duplicate Claim or Equity Interest or any Claim or Equity Interest that has been paid, satisfied, amended, or superseded may be adjusted or expunged (including Pursuant to the Plan) on the Claims Register by the Reorganized Debtors or the Solicitation Agent without the Reorganized Debtors having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Equity Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

F. Disallowance of Claims or Equity Interests.

All Claims and Equity Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (1) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (2) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

G. No Distributions Pending Allowance.

Notwithstanding any other provision of this Plan, if any portion of a Claim or Equity Interest is a Disputed Claim or Disputed Equity Interest, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Allowed Equity Interest; *provided* that if only the Allowed amount of an otherwise valid Claim or Equity Interest is Disputed, such Claim or Equity Interest shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount pending resolution of the dispute.

H. Distributions After Allowance.

To the extent that a Disputed Claim or Disputed Equity Interest ultimately becomes an Allowed Claim or Allowed Equity Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Allowed Equity

Interest in accordance with the provisions of this Plan. On or as soon as reasonably practicable after the next Distribution Date after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Equity Interest becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim or Equity Interest the distribution (if any) to which such Holder is entitled under this Plan as of the Effective Date, without any interest to be paid on account of such Claim or Equity Interest.

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Equity Interests.

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Definitive Documents, this Plan, the Confirmation Order, or in any contract, instrument, or other agreement or document created or entered into pursuant to this Plan or the Plan Supplement, the distributions, rights, and treatment that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Equity Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Equity Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Equity Interest based upon such debt, right, or Equity Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Equity Interest has accepted this Plan. Any default by the Debtors or their non-Debtor Affiliates with respect to any Claim or Equity Interest existing immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims (other than any Reinstated Claims) and Equity Interests (other than any Intercompany Equity Interests that are Reinstated) subject to the occurrence of the Effective Date.

B. ***Release of Liens.***

Except as otherwise provided in this Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan and, in the case of a Secured Claim or any related Claim that may be asserted against a non-Debtor Affiliate, in satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates or any non-Debtor Affiliate shall be fully released and discharged, and all of the right, benefit, title, and interest of any Holder (and the applicable Agents of such Holder, including the Agents/Trustees) of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert and, as applicable, be reassigned, surrendered, reconveyed, or retransferred to the Reorganized Debtors and their successors and assigns. Any Holder of such Secured Claim or Claim against a non-Debtor Affiliate (and the applicable agents for such Holder, including the Agents/Trustees) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor or non-Debtor Affiliate (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder, including the Agents/Trustees) and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors, that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

C. **[*Releases by the Debtors.***

Notwithstanding anything contained in this Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by and on behalf of the Debtors, their Estates, and if applicable, the Reorganized Debtors, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Causes of Action whatsoever (including any Avoidance Actions and any derivative Claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, and their Estates), whether liquidated or unliquidated, fixed, or contingent, matured, or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or herein-after arising, whether in Law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common Law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, that such Holders or their Estates, Affiliates, heirs, executory, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Equity Interest in, the Debtors, the Reorganized Debtors, and their Estates, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, and their Estates (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any Security of the Debtors, the Reorganized Debtors, and their Estates, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, the business or contractual arrangements between any Debtor and any Released Party, any Securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Chapter 11 Cases, any related adversary proceedings, the formulation, preparation, dissemination, solicitation, negotiation, entry into, or filing of the RSA, the Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Definitive Documents, the Series A Units, Series A-1 Units, the Series B Units, the Class C Units, the DIP Facility, or the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of this Plan, including the issuance or distribution of Securities pursuant to this Plan, or the distribution of property under this Plan or any other related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before, in respect of the foregoing clause the Effective Date; *provided*, *however*, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under this Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement this Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the Claims or Causes of Action released by the Debtor Release; (iii) in the best interests of the Debtors, the Estates, and all Holders of Claims and Equity Interests; (iv) fair, equitable, and reasonable; (v) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (vi) a bar to any of the Debtors, the Reorganized Debtors, or the Estates asserting any Claim or Cause of Action released by the Debtor Release against any of the Released Parties.

D. ***Releases by the Releasing Parties.***

Notwithstanding anything contained in this Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Causes of Action whatsoever (including any derivative Claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, and their Estates), whether liquidated or unliquidated, fixed, or contingent, matured, or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or herein after arising, whether in Law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common Law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, that such Holders or their Estates, Affiliates, heirs, executory, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming in under or through them would have would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Equity Interest in, the Debtors, the Reorganized Debtors, and their Estates, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, and their Estates (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any Security of the Debtors, the Reorganized Debtors, and their Estates, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, the business or contractual arrangements between any Debtor and any Released Party, any Securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Chapter 11 Cases, any related adversary proceedings, the formulation, preparation, dissemination, solicitation, negotiation, entry into, or filing of the RSA, the Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the Definitive Documents, the Series A Units, Series A-1 Units, the Series B Units, the Class C Units, the DIP Facility, or the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of this Plan, including the issuance or distribution of Securities pursuant to this Plan, or the distribution of property under this Plan or any other related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before, in respect of the foregoing clause the Effective Date; *provided*, *however*, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under this Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement this Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (i) consensual; (ii) essential to the Confirmation; (iii) given in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the restructuring and implementing this Plan; (iv) a good faith settlement and compromise of the Claims or Causes of Action released by the Third-Party Release; (v) in the best interests of the Debtors and their Estates; (vi) fair, equitable, and reasonable; (vii) given and made after due notice and opportunity for hearing; and (viii) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.][3]

[3] The release and injunction provisions in the Plan remain subject to ongoing review by the Debtors' special committee of disinterested directors.

E. ***Exculpation.***

To the fullest extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party will be released and exculpated from, any Claim or Cause of Action arising prior to the Effective Date in connection with or arising out of the administration of the Chapter 11 Cases, the negotiation and pursuit of the RSA, the Restructuring Transactions, the DIP Facility, the Series A Units, the Series A-1 Units, the Series B Units, the Class C Units, the Definitive Documents, the solicitation of votes for, or Confirmation of, this Plan, the funding of this Plan, the occurrence of the Effective Date, the administration of this Plan or the property to be distributed under this Plan, the issuance of Securities under or in connection with this Plan, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the post-Effective Date Debtors, if applicable, in connection with this Plan and the Restructuring Transactions, or the transactions in furtherance of any of the foregoing, other than Claims or Causes of Action in each case arising out of or related to any act or omission of an Exculpated Party that is a criminal act or constitutes actual fraud, willful misconduct, or gross negligence as determined by a Final Order, but in all respects such Persons will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of Securities pursuant to this Plan and, therefore, are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan, including the issuance of Securities thereunder. The exculpation will be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable Law or rules protecting such Exculpated Parties from liability; *provided*, *however*, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under this Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement this Plan.

The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to this Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan.

F. ***Injunction.***

Except as otherwise expressly provided in this Plan or the Confirmation Order or for obligations or distributions issued or required to be paid pursuant to this Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Equity Interests, Causes of Action, or liabilities that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action, suit, or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Equity Interests, Causes of Action, or liabilities; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Equity Interests, Causes of Action, or liabilities; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims, Equity Interests, Causes of Action, or liabilities; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities or the Estates on account of or in connection with or with respect to any such Claims, Equity Interests, Causes of Action, or liabilities unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Equity Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Equity Interests, Causes of Action, or liabilities released or settled pursuant to this Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect Affiliates, in their capacities as such, shall be enjoined from taking any actions to interfere with the implementation or Consummation of this Plan. Each Holder of an Allowed Claim or Allowed Equity Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Equity Interest, as applicable, pursuant to this Plan, shall be deemed to have consented to the injunction provisions set forth in this Article VIII.F hereof.

G. Protections Against Discriminatory Treatment.

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

H. Document Retention.

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

I. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

ARTICLE IX.
CONDITIONS PRECEDENT TO CONSUMMATION OF THIS PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. the RSA shall not have been terminated as to all parties thereto and shall be in full force and effect;

2. the Bankruptcy Court shall have entered the DIP Orders and the Final DIP Order shall be in full force and effect;

3. the Bankruptcy Court shall have entered the Confirmation Order and the Confirmation Order shall have become a Final Order;

4. the Definitive Documents shall (i) be consistent with the RSA and otherwise approved by the applicable parties thereto consistent with their respective consent and approval rights as set forth in the RSA, (ii) have been executed or deemed executed and delivered by each party thereto, and any conditions precedent

related thereto shall have been satisfied or waived by the applicable party or parties, and (iii) shall have been adopted on terms consistent with the RSA and the Restructuring Term Sheet;

5. the New Equity Interests shall have been issued;

6. all Restructuring Expenses, to the extent timely invoiced, shall have been paid in full; and

7. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate this Plan and each of the other transactions contemplated by this Plan.

B. Waiver of Conditions.

The conditions to the Effective Date set forth in this Article IX may be waived only if waived in writing (email shall suffice) by each of the Debtors, the DIP Lenders, the 1L Convertible Noteholders, the 2L Convertible Noteholders, and, to the extent adversely affecting their consent or other rights under the RSA, the 3L RCF Lender and the Consenting Equityholders, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate this Plan.

C. Effect of Failure of Conditions.

If Consummation does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release by the Debtors or any Holder of Claims or Equity Interests of any Claim or Equity Interest; (2) prejudice in any manner the rights of the Debtors, any Holders of Claims or Equity Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Equity Interests, or any other Entity, respectively; *provided* that all provisions of the RSA that survive termination thereof shall remain in effect in accordance with the terms thereof.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in this Plan, the Debtors reserve the right to modify this Plan, with the consent of the DIP Lenders, the 1L Convertible Noteholders, the 2L Convertible Noteholders, and, to the extent required by the RSA, the 3L RCF Lender and the Consenting Equityholders, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to those restrictions on modifications set forth in this Plan and the RSA, and the requirements of section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, each of the Debtors expressly reserves its respective rights to revoke or withdraw, or, with the consent of the DIP Lenders, the 1L Convertible Noteholders, the 2L Convertible Noteholders, and, to the extent required by the RSA, the 3L RCF Lender and Consenting Equityholders, to alter, amend, or modify this Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify this Plan, or remedy any defect or omission, or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of this Plan.

B. Effect of Confirmation on Modifications.

Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Equity Interests; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or this Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims and Holders of Allowed Equity Interests are accomplished (as applicable) pursuant to the provisions of this Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

7. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created or entered into in connection with this Plan, the Confirmation Order, or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of this Plan;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, discharges, exculpations, and other provisions contained in this Plan, including under Article VIII hereof, whether arising prior to or after the Effective Date, and enter such orders as may be necessary or appropriate to implement such releases, injunctions, exculpations, and other provisions;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Equity Interest for amounts not timely repaid pursuant to Article VI.L hereof;

13. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

14. determine any other matters that may arise in connection with or relate to this Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan, the Plan Supplement, or the Disclosure Statement;

15. enter an order concluding or closing the Chapter 11 Cases;

16. adjudicate any and all disputes arising from or relating to distributions under this Plan or any transactions contemplated herein;

17. consider any modifications of this Plan, to Cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Equity Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

20. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

21. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in this Plan, including under Article VIII hereof, regardless of whether such termination occurred prior to or after the Effective Date;

22. enforce all orders previously entered by the Bankruptcy Court; and

23. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to Article IX.A hereof, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan (including, for the avoidance of doubt, the documents and instruments contained in the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, Reorganized Debtors, and any and all Holders of Claims or Equity Interests (irrespective of whether such Holders of Claims or Equity Interests are deemed to have accepted this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan, each Entity acquiring property under this Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims or Equity Interests shall be as fixed, adjusted, or compromised, as applicable, pursuant to this Plan regardless of whether any Holder of a Claim or Equity Interest has voted on this Plan.

B. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary to effectuate and further evidence the terms and conditions of this Plan. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims receiving distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

C. Payment of Statutory Fees.

All fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Reorganized Debtors (or the Disbursing Agent on behalf of each of the Reorganized Debtors) for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

D. Reservation of Rights.

Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

E. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, manager, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

F. Notices.

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or

made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors, to:

   Appgate, Inc.
   Jeremy M. Dale, General Counsel
   E-mail address: jeremy.dale@appgate.com

   with copies to:

   Kirkland & Ellis LLP
   601 Lexington Avenue
   New York, New York 10022
   Attention: Christopher Marcus, P.C., Derek I. Hunter, Maddison Levine, and Brian Nakhaimousa
   E-mail address: cmarcus@kirkland.com
   derek.hunter@kirkland.com
   maddison.levine@kirkland.com
   brian.nakhaimousa@kirkland.com

2. if to a Consenting 1L Convertible Noteholder, to:

   Willkie Farr & Gallagher LLP
   300 North LaSalle Drive
   Chicago, Illinois 60654-3406
   Attention: Melainie Mansfield
   E-mail address: mmansfield@willkie.com

   - and –

   Willkie Farr & Gallagher LLP
   600 Travis Street, Suite 2100
   Houston, Texas 77002
   Attention: Jennifer Hardy
   E-mail address: jhardy2@willkie.com

   - and –

   Willkie Farr & Gallagher LLP
   787 Seventh Avenue
   New York, New York 10019-6099
   Attention: Eric Halperin
   E-mail address: ehalperin@willkie.com

3. if to a Consenting 2L Convertible Noteholder, to:

   Greenberg Traurig, P.A.
   333 S.E. 2nd Avenue
   Suite 4400
   Miami, Florida 33131
   Attention: Jaret L. Davis
   E-mail Address: davisj@gtlaw.com

4. if to a Consenting 3L RCF Lender or to a Consenting Equityholder, to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attention: Eyal Orgad, Andrew Sorkin
E-mail address: eyal.orgad@lw.com, andrew.sorkin@lw.com

After the Effective Date, the Reorganized Debtors have the authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

G. Term of Injunctions or Stays.

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect from and after the Effective Date in accordance with their terms.

H. Entire Agreement.

Except as otherwise indicated, this Plan (including, for the avoidance of doubt, the documents and instruments in the Plan Supplement) supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

I. Exhibits.

All exhibits and documents included in the Plan Supplement are an integral part of the Plan and are incorporated into and are a part of this Plan as if set forth in full in this Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at https://www.donlinrecano.com/appgate or the Bankruptcy Court's website at https://www.deb.uscourts.gov/. To the extent any exhibit or document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the Plan Supplement exhibit or document shall control.

J. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted; *provided, however*, any such alteration or interpretation shall be acceptable to the Debtors. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified without the Debtors' or the Reorganized Debtors' consent, as applicable; and (3) nonseverable and mutually dependent.

K. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on this Plan in good faith and in compliance with section 1125(g) of the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under this Plan and any previous plan, and, therefore, no such parties nor individuals or the Reorganized Debtors will have any liability for the violation of any applicable Law, rule, or regulation governing the solicitation of votes on this Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under this Plan and any previous plan.

L. Closing of Chapter 11 Cases.

On and after the Effective Date, the Debtors or the Reorganized Debtors shall be permitted to classify all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Appgate, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, as closed, and all contested matters relating to any of the Debtors, including objections to Claims and any adversary proceedings, shall be administered and heard in the Chapter 11 Case of Debtor Appgate, or any other Debtor identified in the Restructuring Transactions Memorandum as having its Chapter 11 Case remain open following the Effective Date, irrespective of whether such Claim(s) were Filed or such adversary proceeding was commenced against a Debtor whose Chapter 11 Case was closed. Such Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 or by Local Rule 3002-1, including the motion required by Local Rule 3002-1, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

M. Waiver or Estoppel.

Each Holder of a Claim or an Equity Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Equity Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

N. Creditor Default.

An act or omission by a Holder of a Claim or Equity Interest in contravention of the provisions of this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Reorganized Debtors may seek to hold the defaulting party in contempt of the Confirmation Order and shall be entitled to reasonable attorneys' fees and costs of the Reorganized Debtors in remedying such default. Upon the finding of such a default by a Holder of a Claim or Equity Interest, the Bankruptcy Court may: (1) designate a party to appear, sign, and/or accept the documents required under this Plan on behalf of the defaulting party, in accordance with Bankruptcy Rule 7070; (2) enforce this Plan by order of specific performance; (3) award a judgment against such defaulting Holder of a Claim or Equity Interest in favor of the Reorganized Debtors in an amount, including interest, if applicable, to compensate the Reorganized Debtors for the damages caused by such default; and (4) make such other order as may be equitable that does not materially alter the terms of this Plan.

[*Remainder of page intentionally left blank.*]

Dated: [●], 2024

APPGATE, INC.
on behalf of itself and all other Debtors

By: */s/ DRAFT* _____
Name: Rene A. Rodriguez
Title: Chief Financial Officer

EXHIBIT F

Form of Transfer Agreement

The undersigned ("**Transferee**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of [●], 2024 (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Agreement**"),[1] by and among Appgate, Inc. and its affiliates and subsidiaries bound thereto and the Consenting Stakeholders, including the transferor to the Transferee of any Company Claims/Equity Interests (each such transferor, a "**Transferor**"), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a ["Consenting Lender"] ["Consenting Equityholder"] under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

_____

Name: [●]
Title: [●]
Address: [●]
E-mail address(es): [●]

Aggregate Amounts Beneficially Owned or Managed on Account of:	
1L Convertible Notes	
2L Convertible Notes	
3L RCF Loans	
Equity Interests	

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

EXHIBIT G

Form of Joinder Agreement

The undersigned ("**Joinder Party**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as [●], 2024, by and among Appgate, Inc. and its affiliates and subsidiaries bound thereto and the Consenting Stakeholders (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Agreement**"),[1] and agrees to be bound by the terms and conditions thereof to the extent that the other Parties are thereby bound, and shall be deemed a ["Consenting Lender"] ["Consenting Equityholder"] under the terms of the Agreement.

The Joinder Party specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date this Joinder Agreement is executed and any further date specified in the Agreement.
Date Executed:

_____
Name: [●]
Title: [●]
Address: [●]
E-mail address(es): [●]

Aggregate Amounts Beneficially Owned or Managed on Account of:	
1L Convertible Notes	
2L Convertible Notes	
3L RCF Loans	
Equity Interests	

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

Exhibit C

Evidentiary Support for First Day Motions[6]

I. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts and Business Forms, and (D) Continue Intercompany Transactions, and (II) Granting Related Relief (the "Cash Management Motion").

1. The Debtors' Cash Management Motion seeks entry of interim and final orders (a) authorizing the Debtors to continue to operate their Cash Management System, (b) authorizing the Debtors to honor certain prepetition and postpetition obligations related thereto, (c) authorizing the Debtors to maintain existing Debtor Bank Accounts and Business Forms in the ordinary course of business, (d) authorizing the Debtors to continue to perform the Intercompany Transactions consistent with historical practice, and (e) granting related relief. The Debtors depend on the efficient collection, transfer, and disbursement of funds to operate in the ordinary course. The Cash Management System (i) is tailored to meet the Debtors' operating needs, (ii) enables the Debtors to control and monitor company funds, (iii) ensures cash availability and liquidity for each entity as necessary, and (iv) reduces administrative expenses incurred in connection with the movement of funds and the reporting of accurate account balances among multiple entities.

2. As of the Petition Date, the Cash Management System consists of approximately thirty-five bank accounts (each, a "Bank Account" and, collectively, the "Bank Accounts"). Of those Bank Accounts, twenty-two are owned and controlled by the Debtors (the "Debtor Bank Accounts"), and the rest are owned by foreign-based non-Debtor affiliates (the "Non-Debtor Bank Accounts") that are direct or indirect subsidiaries of Debtor Appgate Cybersecurity, Inc.

[6] Capitalized terms used but not defined herein have the meaning ascribed to them in the applicable First Day Motion.

3. The following are the Debtor Bank Accounts:

- Fifteen Bank Accounts maintained at HSBC Bank USA ("HSBC");
- Three Bank Accounts maintained at Bank of America, N.A. ("Bank of America");
- Two Bank Accounts maintained at Citi National Bank ("CNB"); and
- Two Bank Accounts maintained at Silicon Valley Bank ("SVB").

4. The active Debtor Bank Accounts consist of ten main accounts held at HSBC and Bank of America, consisting of the following: (i) two primary receivables accounts, one of which is held at Bank of America and one of which is held at HSBC (the "Primary Receivables Accounts"); (ii) two primary concentration accounts, one of which is held at Bank of America and one of which is held at HSBC (the "Primary Concentration Accounts"); (iii) two primary disbursement accounts, one of which is held at Bank of America and one of which is held at HSBC (the "Primary Disbursement Accounts"); (iv) one credit card collateral account held at HSBC (the "Credit Card Collateral Account"); (v) one primary payroll account held at HSBC (the "Primary Payroll Account"); and (vi) two miscellaneous operating accounts held at HSBC (the "Other Operating Accounts").

5. All funds from the Debtors' customer receipts are deposited by way of check, wire transfer, and/or electronic fund transfer into the Primary Receivables Accounts or, occasionally, into one of the Other Operating Accounts. The vast majority of the Debtors' payment obligations to third parties in the United States—other than payroll obligations—are made directly from the Primary Disbursement Accounts; however, the Debtors occasionally make disbursements on account of various operational expenditures from the Other Operating Accounts as well. In each case, such disbursements are made by way of check, wire transfer, and/or electronic fund transfer. The majority of the Debtors' revenue is ultimately directed into the Primary Concentration Accounts to support the Debtors' operations via nightly automatic sweeps from the Primary

Receivables Accounts or manually transferred, as necessary, from the Other Operating Accounts. Thereafter, funds are swept automatically on an as needed basis from the Primary Concentration Accounts into the Primary Disbursement Accounts, or manually, as necessary, to: (a) the Primary Payroll Account, which makes disbursements on account of U.S. payroll obligations; (b) the Intermediate Concentration Accounts, which pool funds for ultimate distribution to various Non-Debtor Bank Accounts; (c) certain of the Non-Debtor Bank Accounts, which support the Company's activity abroad; (d) the Credit Card Collateral Account, which holds cash on account of the Credit Card Obligations (discussed below); and, on occasion, (e) the Other Operating Accounts, which remit disbursements on account of certain of the Debtors' U.S. payroll obligations and Bank Fees, and Other Non-Operating Accounts, which are generally inactive, but are used on occasion to satisfy any Bank Fees, as applicable.

6. In addition, Debtors Appgate Cybersecurity, Inc., Immunity, Inc., Easy Solutions Enterprises Corp., and Easy Solutions, Inc. each maintain certain bank accounts that are either immaterial to the Debtors' global Cash Management System, hold *de minimis* funds, or both (the "Other Non-Operating Accounts"). Debtor Appgate Cybersecurity, Inc. maintains two Other Non-Operating Account at CNB, one of which is a money market account, and one of which is used primarily to satisfy certain Bank Fees (described below). Debtor Immunity, Inc. maintains one low-balance interest-bearing savings account at HSBC. Debtor Easy Solutions Enterprises Corp. maintains one checking account at SVB with a nominal balance. Finally, Debtor Easy Solutions, Inc. maintains one bank account at SVB, which is used primarily to satisfy certain Bank Fees. These Other Non-Operating Accounts carry an average balance of less than approximately $7,000 and are infrequently used.

7. The Non-Debtor Bank Accounts, all of which are maintained at banks outside of the United States (collectively, the "Non-Debtor Banks"), are used to fund Appgate's global operations. Ordinary course transfers between the Debtor Bank Accounts and the Non-Debtor Bank Accounts are an integral part of Appgate's Cash Management System because the company supports its global operations through such intercompany transfers.

8. As part of the Cash Management System, the Debtors utilize a number of preprinted business forms (the "Business Forms"), including, but not limited to, letterhead, purchase orders, invoices, and preprinted and future checks. Allowing the Debtors to continue using of all Business Forms in existence immediately before the Petition Date, without reference to the Debtors' status as debtors in possession, will minimize cost to the estates. Further, once the Debtors exhaust their existing supply of Business Forms during these Chapter 11 Cases, the Debtors will, when reordering (or with respect to checks the Debtors or their agents print themselves), require or print the "Debtor in Possession" legend and corresponding bankruptcy case number on all such items.

9. In the ordinary course of business, the Debtors incur periodic service charges and other fees in connection with maintaining the Cash Management System (collectively, the "Bank Fees"). The Debtors incur approximately $15,000 in the aggregate in Bank Fees each month under the Cash Management System to maintain the Debtor Bank Accounts. The Debtors estimate that they owe approximately $10,000 in prepetition Bank Fees as of the Petition Date. To maintain the integrity of their Cash Management System, the Debtors are requesting authority to pay any prepetition Bank Fees for prepetition transactions that are charged postpetition and to continue to pay the Bank Fees in the ordinary course on a postpetition basis.

10. As part of the Cash Management System, the Debtors provide certain employees with access to credit cards issued by HSBC (the "HSBC Credit Cards") under a corporate credit

card program (the "Credit Card Program"). The Credit Card Program is used to cover certain payments for business travel and entertainment expenses, such as hotel stays and meals, and other necessary and approved company expenditures. Debtor Appgate Cybersecurity, Inc. pays the balances accrued on the HSBC Credit Cards directly for approved charges made by their respective employees through the Credit Card Collateral Account. Employees receive monthly billing statements that reflect the payments these entities made on their behalf. For any expenses not approved by Appgate, the employees are responsible for paying the accrued balances and must make a direct payment to HSBC on account thereof. The Company, however, remains liable to HSBC for payment on account of such charge if the employee does not remit payment.

11. As of the Petition Date, HSBC has issued approximately 40 credit cards under the Credit Card Program to employees of the Debtors. Debtor Appgate Cybersecurity, Inc. guarantees all obligations owing under the Credit Card Program, including any obligations incurred by the Debtors or any non-Debtor affiliates that use the Credit Card Program (collectively, such obligations and guarantee of such obligations, the "Credit Card Obligations") and is required to maintain cash collateral equal to 200% of the total Credit Card Program limit in the Credit Card Collateral Account. On average, the Credit Card Obligations amount to approximately $109,000 per month. Payments made in respect of the Credit Card Obligations are made monthly to HSBC. The Credit Card Program is an integral part of Appgate's Cash Management System. Employees continued use of the Credit Cards for procurement and travel purposes is essential to the continued operation of the Debtors' businesses.

12. The Debtors operate as a global enterprise, and thus, in the ordinary course of business, the Debtors maintain and engage in routine business relationships with each other and their non-Debtor affiliates (such transactions, the "Intercompany Transactions"), resulting in

intercompany receivables and payables (the "Intercompany Balances"). The Debtors generally account for and record all Intercompany Transactions and Intercompany Balances in their centralized accounting system, the results of which are recorded on the Debtors' balance sheets and regularly reconciled.

13. While some of the Debtors' foreign-based non-Debtor affiliates are cash positive and maintain their operations without the need for regular additional funding from the Debtors, other foreign non-Debtor affiliates, when cash is needed, receive ordinary course transfers from a Primary Concentration Account or Other Concentration Account, as applicable, to cover, among other things, business operations and costs such as employee payroll, payments to vendors, taxes, credit cards, insurance and surety bonds, and benefits and expenses incurred by the non-Debtor affiliates, including rent and other operational cost. In the past twelve months, the Debtors remitted an aggregate amount of approximately $11.9 million to the foreign-based non-Debtor affiliates. Conversely, excess cash generated from the business operations of the foreign-based non-Debtor affiliates is also occasionally repatriated back to the Primary Concentration Accounts or Other Concentration Accounts, as applicable, maintained by the Debtors to help fund domestic business operations. In the past twelve months, the Debtors received an aggregate amount of approximately $4.2 million from the foreign non-Debtor affiliates due to excess cash generated from foreign operations. Any discontinuation of the Intercompany Transactions would unnecessarily disrupt the Cash Management System and the Debtors' operations to the detriment of the Debtors, their creditors, and other stakeholders. Absent the relief requested, the Debtors would be required to adopt a new, segmented cash management system, which would be financially and logistically burdensome and cause the Debtors' operations to grind to a halt, needlessly reducing the value of the Debtors' business enterprise.

14. The Cash Management System is a critical component of the Debtors' overall business because of the nature and operational scale of the Debtors' business. Any disruption to the Cash Management System would have an immediate and significant adverse effect on the Debtors' business and operations, to the detriment of their estates and stakeholders. In addition, the Intercompany Transactions are an integral part of the Cash Management System and essential to the Debtors' continued operations.

15. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

II. Application of Debtors for Appointment of Donlin, Recano & Company, Inc. as Claims and Noticing Agent (the "DRC Retention Application").

16. The DRC Retention Application seeks authority to employ Donlin, Recano & Company, Inc. ("DRC") as claims and noticing agent for the Debtors. Based on my discussions with the Debtor's advisors, I believe that the Debtors' selection of DRC is appropriate under the circumstances, is in the best interests of the estates, and satisfies the Claims Agent Protocol. Moreover, it is my understanding, based on all engagement proposals obtained and reviewed, that DRC's rates are competitive and comparable.

17. The Debtors anticipate that there will be hundreds of persons and entities to be noticed in these Chapter 11 Cases. In light of the number of parties in interest and the complexity of the Debtors' business, the appointment of a claims and noticing agent is in the best interests of the Debtors' estates, their creditors, and all other parties in interest because it will provide the most efficient means for noticing and processing proofs of claim. Further, DRC has the expertise

required for complex chapter 11 cases. Accordingly, it is my opinion that the Court should approve the DRC 156(c) Retention Application.

III. Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief (the "NOL Motion").

18. The NOL Motion seeks entry of interim and final orders (a) approving certain notification and hearing procedures (the "Procedures"), related to certain transfers of, or declarations of worthlessness, with respect to, Debtor Appgate, Inc.'s existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the "Common Stock"); (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*; and (c) granting related relief.

19. The Debtors had, as of December 31, 2023, approximately $247.9 of federal NOLs and approximately $5.6 million of 163(j) Carryforwards, as well as certain other Tax Attributes. The Debtors may generate substantial additional tax attributes in the current tax year, including during the pendency of these chapter 11 cases. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Tax Attributes may offset federal taxable income or federal tax liability in future years. In addition, the Debtors may utilize such Tax Attributes to offset any taxable income generated by transactions consummated during these Chapter 11 Cases. Accordingly, the value of the Tax Attributes will inure to the benefit of the Debtors' stakeholders.

20. I believe that the Procedures related to certain transfers of, or declarations of worthlessness, with respect to, Debtor Appgate, Inc.'s Common Stock is necessary and appropriate to preserve the value of the Tax Attributes to the benefit of the Debtors' stakeholders. Conversely, a premature limitation of the Debtors' Tax Attributes could cause substantial deterioration of value

and significantly reduce recoveries to the Debtors' stakeholders. Failure to obtain the relief sought in this Motion could, therefore, greatly increase the risk that the Debtors would be unable to maximize the value of their estates.

21. Notably, the Debtors have limited the relief requested herein to the extent necessary to preserve the value of their estates. Specifically, the proposed Interim Order and Final Order will affect only: (a) holders of the equivalent of more than 5,930,714 shares of Common Stock (*i.e.*, 4.5 percent or more of all issued and outstanding Common Stock); (b) parties who are interested in purchasing or otherwise acquiring an amount of Common Stock that would result in such party becoming a holder of 4.5 percent or more of Beneficial Ownership of any class (or series) of outstanding Common Stock; and (c) any "50 percent shareholder" seeking to claim a worthless stock deduction.

22. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors seek limited relief that will enable them to closely monitor certain transfers of and issuances with respect to Beneficial Ownership of Common Stock and certain worthless stock deductions with respect to Beneficial Ownership of Common Stock so as to be in a position to act expeditiously to prevent such transfers or worthlessness deductions, if necessary, with the purpose of preserving the Tax Attributes. By establishing and implementing such Procedures, the Debtors will be in a position to object to "owner shifts" that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

23. I believe that the relief requested in the NOL Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates

for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the NOL Motion should be approved.

IV. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees, and (II) Granting Related Relief (the "Taxes Motion").

24. The Taxes Motion seeks entry of interim and final orders (a) authorizing the Debtors to negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees to various governmental authorities in the ordinary course of business that are payable or become payable during these Chapter 11 Cases and (b) granting related relief. Failure to pay the Taxes and Fees could materially disrupt the Debtors' business operations. Further, nonpayment of the Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. Finally, the Debtors' failure to pay the prepetition Taxes and Fees as they come due may ultimately increase the tax liability for the Debtors and their estates or result in personal liability for the Debtors' directors and officers, which would distract these critical personnel from the Debtors' restructuring efforts.

25. In the ordinary course of business, the Debtors collect, withhold, and incur: (a) income taxes; (b) franchise taxes; (c) sales and use taxes; (d) goods and services taxes; (e) value-added taxes and related fees; (f) customs and import duties; (g) regulatory taxes and fees, as well as other governmental taxes, fees, assessment, interest, penalties, and additions to tax; and (h) digital services taxes (collectively, the "Taxes and Fees"). The Debtors estimate that $522,000 in Taxes and Fees are outstanding as of the Petition Date. The Debtors pay or remit, as applicable, the Taxes and Fees to various governmental authorities (each, an "Authority," and collectively, the "Authorities") on a periodic basis (monthly, quarterly, semi-annually, or annually) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. The Debtors generally, but not exclusively, pay and remit Taxes and Fees through

electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors may also receive tax credits for overpayments or refunds with respect to Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or have the amount of such credits refunded to the Debtors.

26. Additionally, the Debtors are subject to, and may become subject to further routine audit investigations on account of tax returns and/or tax obligations ("Audits") during these Chapter 11 Cases. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors. Critically, in certain of the jurisdictions where the Debtors operate, the Debtors must be able to accept a proposed resolution of an Audit and make a payment with respect to such resolution in a timely manner.

27. The Debtors' Taxes Motion seeks authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including: (a) Taxes and Fees that accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition or were paid in an amount less than actually owed; (c) payments made by the Debtors prepetition that were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these Chapter 11 Cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so-called "straddle" periods.

28. Any failure by the Debtors to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including (but not limited to): (a) the Authorities may initiate Audits of the Debtors, which would unnecessarily divert the Debtors' attention from

these Chapter 11 Cases; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and/or pursue other remedies that will harm the Debtors' estates; and (c) in certain instances, certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtors' Chapter 11 Cases. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. In addition, nonpayment of the Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Risking any of these negative outcomes is unnecessary. Accordingly, the Debtors seek authority to pay the Taxes and Fees and Assessments as they become due, as necessary.

29. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes Motion should be approved.

V. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage Entered into Prepetition and Pay Related Prepetition Obligations and (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage, and (II) Granting Related Relief (the "Insurance Motion").

30. The Debtors' Insurance Motion seeks entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) maintain coverage under the Insurance Policies and pay any related prepetition or postpetition amounts or obligations related thereto and

(ii) renew, supplement, modify, or purchase Insurance Policies in the ordinary course of business and (b) granting related relief.

31. In the ordinary course of business, the Debtors maintain 22 insurance policies on behalf of themselves, as well as approximately 16 insurance policies issued to certain of their foreign non-debtor subsidiaries (collectively, the "Insurance Policies"), all of which are administered by various third-party insurance carriers (collectively, the "Insurance Carriers"). The Insurance Policies provide coverage for, among other things, the Debtors' commercial property, general liability, automobile liability, transportation liability, foreign package liability, cyber liability, workers' compensation, commercial umbrella and excess coverage, casualty liability, employment practices liability, employed lawyers liability, fiduciary liability, commercial crime liability, kidnap and ransom coverage, and directors' and officers' liability.

32. The Debtors' Insurance Policies are essential to the ongoing operations of the Debtors' business. The Insurance Policies are generally one year in length. The annual premiums for the Insurance Policies total approximately $1.99 million, not including applicable deductibles. The Insurance Policy premiums are generally paid in a single lump sum shortly after the Insurance Policy inception date, according to the terms of each Insurance Policy, or in monthly installments, in some cases in accordance with the payment terms agreed with the applicable Insurance Carrier and in others pursuant to a Premium Financing Arrangement (as defined below). As of the Petition Date, the Debtors estimate that they owe approximately $250,000 in prepetition obligations on account of the Insurance Policies. The Debtors will pay the amounts due on account of the Insurance Policies within the first 21 days of these Chapter 11 Cases. Accordingly, the Debtors seek authority, but not direction, to pay any prepetition obligations owing on account of

the Insurance Policies in the ordinary course of business to ensure uninterpreted coverage thereunder.

33. The Debtors' ability to maintain the Insurance Policies, to renew, supplement, and modify the same as needed, and to enter into new Insurance Policies as needed in the ordinary course of business, is essential to preserving the value of the Debtors' businesses, operations, and assets. Moreover, in many instances, insurance coverage is required by statutes, rules, regulations, and contracts that govern the Debtors' commercial activities, including the requirements of the U.S. Trustee that a debtor maintain adequate coverage given the circumstances of its Chapter 11 Case. Accordingly, the Debtors seek authorization, but not direction, to maintain the Insurance Policies, to pay related prepetition obligations, to renew, supplement, or modify the Insurance Policies as needed, and to enter into new insurance policies in the ordinary course of business.

34. As of the Petition Date, the Debtors do not believe that any prepetition Broker Fees are outstanding. Nevertheless, out of an abundance of caution, the Debtors seek authority, but not direction, to pay any prepetition obligations owing on account of the Broker Fees in the ordinary course of business to ensure uninterrupted coverage under their Insurance Policies.

35. For the policy year ending October 12, 2024, the Debtors finance the premiums under several of the Insurance Policies pursuant to certain payment arrangements with the Broker (the "Premium Financing Arrangement"). The aggregate annual premiums financed, and fees paid, under the Premium Financing Arrangement is approximately $1.72 million. As of the Petition Date, approximately $180,000 remains outstanding under the Premium Financing Arrangement, with no amounts in arrears. The Debtors will pay the remaining amounts due under the Premium Financing Arrangement within the first 21 days of these Chapter 11 Cases.

36. I believe that authorizing, but not directing, the Debtors to maintain coverage under the Insurance Policies and pay any related prepetition or postpetition amounts or obligations related thereto, including the payment of Broker Fees and amounts due under the Premium Financing Arrangement, as needed, is essential to the preservation of the value of the Debtors' business and operations, and that failure to receive the requested relief in the Insurance Motion at the outset of these Chapter 11 Cases could expose the Debtors to direct liability for payment of claims otherwise covered by the Insurance Policies.

37. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

VI. Debtors' Motion for Entry of an Order (I) Directing the Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").

38. The Debtors' Joint Administration Motion seeks joint administration of the Debtors' cases for procedural purposes only, given the integrated nature of the Debtors' operations. Joint administration of these cases is appropriate here. Given the integrated nature of the Debtors' operations, joint administration of these Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in these Chapter 11 Cases will affect each Debtor entity. The entry of an order directing joint administration of these Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration will also allow the U.S. Trustee and all parties in interest to monitor these Chapter 11 Cases with greater ease and efficiency.

39. Moreover, joint administration will not adversely affect the Debtors' respective constituencies. This motion seeks only administrative, not substantive, consolidation of the Debtors' estates. Parties in interest will not be harmed by the relief requested; instead, parties in interest will benefit from the cost reductions associated with the joint administration of these Chapter 11 Cases. Accordingly, the Debtors submit that the joint administration of these chapter 11 cases is in the best interests of their estates, their creditors, and all other parties in interest.

40. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

VII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages Motion").

41. The Debtors' Wages Motion seeks entry of interim and final orders (a) authorizing the Debtors to (i) pay all prepetition wages, salaries, Commissions, other compensation, and Reimbursable Expenses on account of the Compensation and Benefits and (ii) continue to administer the Compensation and Benefits in the ordinary course of business, including payment of prepetition obligations related thereto; and (b) granting related relief.

42. As of the Petition Date, the Debtors employ approximately 105 employees (the "Employees"), all of whom are full-time Employees. The Employees include personnel who are intimately familiar with the Debtors' business, processes, and systems, and possess unique skills and experience with respect to the Debtors' core business segments. As a global cybersecurity solutions provider, technically skilled Employees are imperative to the Debtors' business operations. Without the continued, uninterrupted services of the Employees, the Debtors'

business operations will come to a halt, materially impairing the administration of the Debtors' estates. In addition to the Employees, the Debtors' workforce also includes approximately 30 independent contractors (the "Independent Contractors") who perform sales system support, accounting support, marketing support, product leadership services, and software development services for the Debtors.

43. The vast majority of the Employees and Independent Contractors rely on their compensation and benefits to pay their daily living expenses. These workers will be unfairly harmed if the Debtors are not permitted to continue paying compensation and providing health and other benefits during these Chapter 11 Cases.

44. To minimize the personal hardship that Employees and Independent Contractors could suffer if prepetition Employee and Independent Contractor-related obligations remain unpaid during these Chapter 11 Cases, the Debtors seek authority to: (a) pay and honor certain prepetition claims relating to, among other things, Wage/Pay Obligations, payroll processing, Reimbursable Expenses, Health and Welfare Coverage and Benefits, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions), Paid Leave Benefits, and certain other benefits that the Debtors have provided in the ordinary course (each as defined herein, and collectively, the "Compensation and Benefits"); and (b) pay all costs related to or on account of the Compensation and Benefits.

a. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.

45. *Wage/Pay Obligations*. In the ordinary course of business, the Debtors have incurred obligations to their Employees for Employee Compensation, Independent Contractor Obligations, Employment Agency Obligations, and Commissions (each as defined below and collectively, the "Wage/Pay Obligations"). As of the Petition Date, the Debtors estimate that they

owe approximately $600,000 on account of accrued but unpaid Wage/Pay Obligations. Furthermore, as of the Petition Date, the Debtors believe that they do not owe Wage/Pay Obligations in excess of the statutory cap of $15,150 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Statutory Cap") to any Employees.

46. *Unpaid Employee Compensation*. In the ordinary course of business, the Debtors incur obligations to their Employees for wages, overtime, and similar obligations (the "Employee Compensation").[7] Because Employees are generally paid in arrears, certain Employees are owed accrued but unpaid Employee Compensation as of the Petition Date (the "Unpaid Employee Compensation"). Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees, or as a result of Employees holding uncashed paper paychecks as of the Petition Date.

47. All of the Debtors' payroll is made by direct deposit through the electronic transfer of funds to the Employees' bank accounts or other electronic means on a bi-weekly basis, and Employee Compensation accrues on either a salaried or hourly basis. As of the Petition Date, the Debtors estimate that they owe approximately $450,000 on account of accrued but Unpaid Employee Compensation. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Unpaid Employee Compensation, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

[7] The Debtors pay in the ordinary course a portion of the payroll for approximately 11 employees of foreign non-debtor subsidiary Immunity Inc. Sucursal Empresa Extranjera. The Employee Compensation figure discussed herein is inclusive of such payments.

48. *Independent Contractor Obligations*. In the ordinary course of business, the Debtors incur payment obligations to their Independent Contractors for services rendered to the Debtors (the "Independent Contractor Obligations"). The Debtors pay their Independent Contractors on a bi-weekly or monthly basis at an agreed market rate pursuant to a monthly retainer or at an hourly rate for the services provided. The Independent Contractors perform critical sales system support, accounting support, marketing support, product leadership services, and software development services that support the Debtors' Employees and operations. The Debtors believe that the authority to continue paying their Independent Contractors is critical to maintaining and administering their estates.

49. On average, the Debtors spend approximately $340,000 per month on Independent Contractor Obligations. As of the Petition Date, the Debtors estimate that they owe approximately $75,000 in accrued but unpaid Independent Contractor Obligations. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Independent Contractor Obligations and continue honoring the Independent Obligations in the ordinary course of the Debtors' business.

50. *Employment Agency Obligations*. In the ordinary course of business, the Debtors employ one individual indirectly through Safeguard World Payroll Services Canada, an external employment agency (the "Employment Agency"). The Debtors make bi-weekly payments to the Employment Agency based on invoices submitted to the Debtors which account for the Employee's base salary, social costs, employer benefit costs, and expenses (the "Employment Agency Obligations"). The Employment Agency Employee performs critical business functions, including technical customer support. The Debtors pay the Employment Agency a monthly administrative fee of approximately $875 (the "Employment Agency Fee" and together with the Employment Agency Obligations, the "Employment Agency Obligations and Fees").

51. As of the Petition Date, the Debtors estimate that they do not owe any prepetition amounts on account of accrued and unpaid Employment Agency Obligations and Fees. The Debtors believe the authority to pay Employment Agency Obligations and Fees is critical to maintaining and administering their estates. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Employment Agency Obligations and Fees and continue honoring the Employment Agency Obligations and Fees in the ordinary course of the Debtors' business.

52. *Unpaid Commissions*. In the ordinary course of business, the Debtors pay sales-based commissions to approximately 39 non-insider Employees and Independent Contractors (the "Commissions"). These Employees and Independent Contractors market and sell the Debtors' products and services and generally receive commission payments on a monthly or quarterly basis, in-arrears in varying percentages based on the sales tied to their individual efforts. The payment of such Commissions to Employees and Independent Contractors occurs forty-five (45) days following the month in which Commissions are earned. The Commissions are an important part of such Employees' and Independent Contractors' overall compensation packages and motivate them to maximize their sales performance. Many of the Employees and Independent Contractors rely on the Commissions for their daily living expenses such that the failure to pay such Commissions would impose undue hardship. On average, the Debtors spend approximately $850,000 per quarter on Commissions. As of the Petition Date, the Debtors owe approximately $75,000 in accrued but unpaid Commissions (the "Unpaid Commissions").

53. For the avoidance of doubt, accrued and unpaid prepetition Commissions do not exceed the Statutory Cap. Due to the particular importance of Commissions to the Debtors' business, including their ability to maintain workforce morale and sales momentum during these Chapter 11 Cases, the Debtors are seeking authority, but not direction, to pay all outstanding

prepetition Wage/Pay Obligations in full, including Commissions, as they become due and payable in the ordinary course of the Debtors' business.

54. *Payroll Processing*. In the ordinary course of business, UKG Inc. processes and administers all of the Debtors' Payroll Deductions and Payroll Taxes (each as defined below and collectively, the "Withholding Obligations"). During each applicable payroll, UKG Inc. deducts certain amounts from Employees' paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of healthcare benefits and insurance premiums, 401(k) contributions, legally ordered deductions, and miscellaneous deductions (collectively, the "Payroll Deductions") and forwards the Payroll Deductions to various third-party recipients. In addition to the Payroll Deductions, UKG Inc. ensures that the Debtors withhold amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities as required by certain state and federal laws (collectively, the "Employee Payroll Taxes"). The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (collectively, the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed by UKG Inc. and forwarded to the appropriate federal, state, and local taxing authorities in accordance with remittance intervals and deadlines established by such taxing authorities.

55. The Debtors incur a quarterly average of approximately $20,000 on account of these payroll processing and application hosting services provided by UKG Inc. As of the Petition

Date, the Debtors estimate that they do not owe any amounts on account of payroll processing services (the "Unpaid Payroll Processing Fees").

56. *Reimbursable Expenses*. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed certain Employees for pre-approved expenses incurred on behalf of the Debtors within the scope of their employment (the "Reimbursable Expenses"). Reimbursable Expenses include, among other expenses, travel-related expenses and business-related entertainment expenses. Employees who pay for their own Reimbursable Expenses up-front (*i.e.*, not via a Company credit card) apply for reimbursement of such expenses by submitting an expense report to the Debtors. Once the Debtors determine that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for any such expenses.

57. The Debtors' inability to satisfy the Reimbursable Expenses could impose a hardship on the Employees where such individuals incurred obligations for the Debtors' benefit. Employees incurred the Reimbursable Expenses as business expenses on the Debtors' behalf with the understanding that such expenses would be reimbursed.

58. The Debtors incur a monthly average of approximately $60,000 on account of Reimbursable Expenses. As of the Petition Date, the Debtors estimate that they do not owe any prepetition amounts on account of Reimbursable Expenses.

b. Health and Welfare Coverage and Benefits

59. The Debtors have offered their Employees the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, medical and prescription, life and disability insurance, dental insurance, vision insurance, and savings and spending account programs and other employee benefit plans (collectively, the "Health and

Welfare Coverage and Benefits"). The Health and Welfare Coverage and Benefits are, in each case, available to all full-time employees (the "Eligible Employees").

60. The Debtors incur a monthly average of approximately $123,000 on account of the Health and Welfare Coverage and Benefits. Additionally, as of the Petition Date, the Debtors estimate that they do not owe any prepetition amounts on account of unpaid Health and Welfare Coverage and Benefits. As described above, failure to continue the Health and Welfare Coverage and Benefits could cause Employees to experience severe hardship and make it difficult to retain the Debtors' workforce.

c. Workers Compensation

61. The Debtors maintain workers' compensation insurance for their Employees at the statutorily required level for each state in which they have Employees (collectively, and as described herein, the "Workers' Compensation Program"). As part of the Workers' Compensation Program, the Debtors maintain a workers' compensation insurance policy with Berkley National Insurance Company (the "Workers' Compensation Insurance Policy").

62. The Debtors must continue claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements. There are currently no active open claims under the Workers' Compensation Program.

63. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. As of the Petition Date, the Debtors do

not believe that there are any prepetition amounts outstanding on account of accrued but unpaid Workers' Compensation Program obligations.

d. The 401(k) Plan.

64. The Debtors maintain a retirement savings plan for the benefit of their Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the "401(k) Plan"). The 401(k) Plan is administered by Principal Financial Group and allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code.

65. The Debtors match Employees' 401(k) contributions at a dollar-for-dollar rate for every dollar contributed by the Employee for the first 1 percent contributed and then at a 50 percent rate for the next 5 percent contributed by the Employee, for an annual matching cap of 6 percent (collectively, the "401(k) Matching Contributions"). The 401(k) Matching Contributions are made in each pay period.

66. During each calendar year, the Debtors incur approximately $480,000 on account of 401(k) Matching Contributions. As of the Petition Date, the Debtors estimate that they owe approximately $181,000 on account of 401(k) Matching Contributions, which includes amounts accrued during the 2023 calendar year.

e. Paid Leave Benefits

67. The Debtors have, in the past, provided paid time off to certain eligible Employees as a benefit (the "Paid Leave Benefits"). The Debtors' Paid Leave Benefits program combines flexible time off, vacation, sick, holiday, jury duty, military leave, military caregiver leave, parental leave, family and medical leave, domestical violence leave, and bereavement leave. When an Employee elects to use Paid Leave Benefits, that Employee is paid his or her regular hourly or salaried rate. Paid Leave Benefits generally accrue at specified rates up to a maximum amount

based on the Employee's years of service. Upon an Employee's termination, the Debtors will cash out certain Employee's Paid Leave Benefits to the extent required by applicable law or consistent with internal policy.

68. The Debtors believe that the continuation of the Paid Leave Benefits policies in accordance with prior practice is essential to maintaining Employee morale during these Chapter 11 Cases. Further, the policies are broad-based programs upon which all Employees have come to depend. As of the Petition Date, the Debtors estimate that there is approximately $0 in accrued but unpaid Paid Leave Benefits for Employees of the Debtors.

f. Additional Benefit Programs.

69. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of general, ancillary benefits, including, without limitation: (a) pet insurance; (b) critical illness insurance; (c) hospital indemnity plans; (d) twenty-four hour accident insurance; (e) wellness support programs, where the Employees may seek certain benefits, including child care, stress management, emotional and psychological distress programs; (f) leadership training materials; (g) a mobile phone stipend; (h) a work from home stipend; (i) a medical insurance waiver credit for certain employees who waive employer Medical Coverage; and (j) an employee referral bonus (collectively, the "Additional Benefit Programs"). As of the Petition Date, approximately $20,000 is accrued and outstanding under the Additional Benefit Programs.

70. I believe that the relief requested in the Wages Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the Wages Motion should be approved.

VIII. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Redact Certain Personally Identifiable Information of Natural Persons; (II) Waiving the Requirement to File a List of Equity Security Holders; and (III) Granting Related Relief (the "Creditor Matrix Motion").

71. The Debtors' Creditor Matrix Motion seeks entry of interim and final orders (a) authorizing the Debtors to redact certain personally identifiable information of natural persons within any paper filed or to be filed with the Court in these Chapter 11 Cases, including but not limited to, the consolidated list of creditors (the "Creditor Matrix"), the schedules of assets of liabilities and the statements of financial affairs, and any related affidavits of service; (b) waiving the requirement to file a list of, and to provide notice directly to, the equity security holders of Debtor Appgate, Inc.; and (c) granting related relief.

72. I believe that it is appropriate to authorize the Debtors to redact the home, and email addresses of natural persons and all personally identifiable information of minors, from any paper filed or to be filed with the Court in these Chapter 11 Cases, including the Creditor Matrix and Schedules and Statements, because (i) such information can be used to perpetrate identity theft, phishing scams, or to locate survivors of domestic violence, harassment, or stalking. I believe and (ii) disclosure of such personally identifiable information risk violating data and privacy laws and regulations, thereby exposing the Debtors to potential civil liability and significant financial penalties. I believe redaction is necessary to protect information that would create an undue risk of identity theft or other unlawful injury to the individual or the individual's property because the risk described in section 107(c)(1) of the Bankruptcy Code is real and not merely speculative. Because the Debtors will provide an unredacted version of the Creditor Matrix, the Schedules and Statements, affidavits of service, and any other applicable filings redacted pursuant to a Court order to the Court, the U.S. Trustee, counsel to the official committee of unsecured creditors appointed in these Chapter 11 Cases (if any), the Claims and Noticing Agent, and any party in

interest upon a request to the Debtors or to the Court that is reasonably related to these Chapter 11 Cases, *provided* that each such request would be subject to a review of whether such disclosure, on a case-by-case basis, would violate any privacy or data protection law or regulation, I submit that the Debtors' proposed redactions are appropriate under the circumstances. Failure to redact certain personally identifiable information of natural persons risks exposing the Debtors to potential civil liability and significant financial penalties. Further, preparing and submitting a list with last known addresses for each equity security holder of Debtor Appgate, Inc. would create undue expense and administrative burden with limited corresponding benefits to the Debtors' estates or parties in interest.

73. In addition, it is my understanding that privacy and data protection regulations have been enacted in key jurisdictions in which the Debtors and their non-debtor affiliates do business. Key jurisdictions also have privacy and data protection regulations. The United Kingdom Data Protection Act of 2018 and the United Kingdom General Data Protection Regulation (together, the "UK GDPR"), the European General Data Protection Regulation (the "EU GDPR"), and similar laws in other jurisdictions impose significant constraints on the processing (which includes the transferring or disclosing) of information relating to identified or identifiable individuals (which includes names and home addresses of individuals and individual business contacts) ("Personal Data"). Disclosure of Personal Data of individual creditors on the public docket is not necessary for the purpose of reviewing the claim amounts of individual creditors in connection with a plan of reorganization or administering the Chapter 11 Cases, and the Debtors' proposed redaction would be a less intrusive way of achieving this purpose. By redacting the Personal Data on the public docket, the Debtors are complying with their obligations under the Bankruptcy Code, protecting individuals' interests and right to privacy, and abiding by one of the foundational

principles of the GDPR by opting for the least intrusive way to reasonably achieve their desired purpose.

74. I believe that the relief requested in the Creditor Matrix Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the Creditor Matrix Motion should be approved.

IX. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Trade Claims in the Ordinary Course of Business, (II) Requiring Creditors to Maintain Customary Terms as a Condition to Payment, and (III) Granting Related Relief (the "All Claims Motion").

75. The Debtors' All Claims Motion seeks entry of interim and final orders (a) authorizing the Debtors to pay the liquidated, noncontingent, and undisputed prepetition claims of third-party creditors who will be treated as unimpaired for purposes of the Plan, including without limitation, cloud computing service providers, IT solutions providers, and software providers (the "Prepetition Creditors"), as they come due in the ordinary course, (b) requiring creditors, as a condition to payment, to maintain or apply contractual terms during the pendency of these Chapter 11 Cases that are at least as favorable as those terms existing as of the Petition Date, and (c) granting related relief.

76. In the ordinary course of their business, the Debtors incur numerous obligations to various creditors that provide the Debtors with a variety of resources and services that are necessary for the Debtors' continued business operations. These Prepetition Creditors will be treated as unimpaired for the purposes of the Plan. The services and goods provided in the ordinary course of business by the Prepetition Creditors include cloud technology, software technology, and other intangible services specific to the Debtors' various security products. The Debtors

estimate that, as of the Petition Date, the aggregate prepetition claims owed to the Prepetition Creditors total approximately $5.9 million (the "Payable Claims").

77. The Debtors believe that authorization to pay the Payable Claims is necessary to minimize disruption to the Debtors, ensure uninterrupted operations and to allow for a seamless transition through these Chapter 11 Cases, for the benefit of all parties in interest. Maintaining the Debtors' operations without disruption is critical to the Debtors' ability to generate revenue and requires the Debtors' use of, among other things, the cloud computing services, IT solutions, and other software provided by the Prepetition Creditors. If Prepetition Creditors do not receive payment for their prepetition services, they may not continue to provide services on behalf of the Debtors and the Debtors may be unable to fulfill customer orders.

78. Because the Payable Claims are unimpaired under the Plan, the relief requested merely expedites the treatment and distribution to the Prepetition Creditors that they would otherwise be entitled to receive upon consummation of the Plan. Given the strong likelihood that holders of the Payable Claims will be paid in full anyway, the mere timing difference is, in the Debtors' business judgment, warranted in order to avoid the risk of deteriorating relationships with their cloud computing services providers, IT solutions providers, software providers, and other parties.

79. The Debtors' business is dependent on maintaining positive relationships with their Prepetition Creditors. Accordingly, the Debtors seek to honor their commitments to make payments to their Prepetition Creditors as and when they come due during the course of these Chapter 11 Cases. Further, the Restructuring Support Agreement—which serves as the foundation of the Debtors' prepackaged Plan and these Chapter 11 Cases—contemplates that trade claims will "ride through" these Chapter 11 Cases. In light of the prepackaged nature of these Chapter 11

Cases, the unimpaired treatment of General Unsecured Claims under the Plan, and the overwhelmingly affirmative support for the Plan expressed by the Consenting Stakeholders, the Debtors believe that this relief is appropriate under the circumstances.

80. I believe that the relief requested in the All Claims Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to facilitate a timely and efficient process to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, on behalf of the Debtors, I respectfully submit that the All Claims Motion should be approved.