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

# Form 8-K

**Current Report**
**Pursuant to Section 13 or 15(d)**
**of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): June 12, 2014**

# Verint Systems Inc.
**(Exact name of registrant as specified in its charter)**

| Delaware | 001-34807 | 11-3200514 |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

| 330 South Service Road, Melville, New York | 11747 |
|---|---|
| (Address of principal executive offices) | (Zip code) |

**(631) 962-9600**
**(Registrant's telephone number, including area code)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01. Entry into a Material Definitive Agreement.**

On June 12, 2014, Verint Systems Inc. (the "Company") entered into an underwriting agreement (the "Common Stock Underwriting Agreement") with Goldman, Sachs & Co., as representative of the several underwriters named on Schedule A thereto (the "Common Stock Underwriters"), relating to the issuance and sale of 5,750,000 shares of the Company's common stock, par value $0.001 per share ("Common Stock"), including 750,000 shares issued to the Common Stock Underwriters pursuant to the exercise in full on June 13, 2014 of their option to purchase additional shares, at a price to the public of $47.75 per share. The offering was made in a public offering pursuant to the Company's Registration Statement on Form S-3 (File No. 333-196612) (the "Registration Statement") and a related prospectus, including the related prospectus supplement, filed with the Securities and Exchange Commission (the "SEC"). The foregoing summary is qualified in its entirety by reference to the text of the Common Stock Underwriting Agreement, which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

In addition, on June 12, 2014, the Company entered into an underwriting agreement (the "Notes Underwriting Agreement") with Deutsche Bank Securities Inc., as representative of the several underwriters named on Schedule A thereto (the "Note Underwriters"), relating to the issuance and sale of $400 million in aggregate principal amount of the Company's 1.50% convertible senior notes due 2021 (the "Notes"), including $50 million aggregate principal amount of Notes issued to the Notes Underwriters pursuant to the exercise in full on June 13, 2014 of their option to purchase additional shares. The offering was made in a public offering pursuant to the Registration Statement and a related prospectus, including the related prospectus supplement, filed with the SEC. The foregoing summary is qualified in its entirety by reference to the text of the Notes Underwriting Agreement, which is filed as Exhibit 1.2 to this Current Report on Form 8-K and is incorporated herein by reference.

The net proceeds from the concurrent offerings were approximately $656.8 million, after deducting underwriters' discount and commissions, but without giving effect to the cost of certain convertible note hedge transactions entered into in connection with the issuance of the Notes, the proceeds from certain warrant transactions entered into in connection with the issuance of the Notes, or other offering expenses payable by the Company. The convertible note hedge transactions and warrant transactions are described under Item 3.02 of this Current Report on Form 8-K.

On June 18, 2014, in connection with the issuance of the Notes, the Company entered into an indenture (the "Base Indenture") and a First Supplemental Indenture (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), in each case, with Wilmington Trust, National Association, as trustee (the "Trustee").

Under the Indenture, the Notes are senior unsecured obligations of the Company and will mature on June 1, 2021, unless repurchased or converted in accordance with their terms prior to that date. Interest on the Notes will be paid semi-annually in arrears at a rate of 1.50% per annum. The Notes are convertible, at the Company's election, into cash, shares of Common Stock, or a combination of both, subject to satisfaction of specified conditions and during specified periods. Upon conversion, the Company currently intends to pay cash in respect of the principal amount. The Notes are convertible at an initial conversion rate of 15.5129 shares of Common Stock per $1,000 principal amount of Notes (equivalent to an initial conversion price of approximately $64.46 per share).

Holders may surrender their Notes for conversion at any time prior to the close of business on the business day immediately preceding December 1, 2020 only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on September 30, 2014, if the closing sale price of the Common Stock, for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the calendar quarter immediately preceding the calendar quarter in which the conversion occurs, is more than 130% of the conversion price of the Notes in effect on each applicable trading day;
- during the ten consecutive trading-day period following any five consecutive trading-day period in which the trading price for the Notes for each such trading day was less than 98% of the closing sale price of the Common Stock on such date multiplied by the then-current conversion rate; or
- upon the occurrence of specified corporate events.

On or after December 1, 2020 until the close of business on the second scheduled trading day immediately preceding the stated maturity date, holders may surrender their Notes for conversion regardless of the foregoing circumstances.

If the Company satisfies its conversion obligation in solely cash or a combination of cash and shares of Common Stock, the amount of cash and shares of common stock, if any, due upon conversion will be based on a daily conversion value (as described in the Indenture) for each trading day in a 50 trading-day conversion period (as described in the Indenture). Holders will not receive any additional cash payment or additional shares of Common Stock representing accrued and unpaid interest, if any, upon conversion of a Note, except in limited circumstances. Instead, interest will be deemed to be paid by the consideration delivered upon conversion of a Note.

The conversion rate for the Notes is subject to adjustment as described in the Indenture. An adjustment to the conversion rate will result in a corresponding (but inverse) adjustment to the conversion price.

If specified “make-whole adjustment events” (as described in the Indenture) occur, the conversion rate for any Notes converted in connection with such make-whole adjustment event will, in specified circumstances, be increased by a number of additional shares of Common Stock. In addition, holders may require the Company to purchase for cash all or any portion of their Notes upon the occurrence of a “fundamental change” (as described in the Indenture) at a price equal to 100% of the principal amount of the Notes being purchased, plus accrued and unpaid interest to, but excluding, the fundamental change purchase date.

The Indenture contains other terms and covenants that the Company believes are customary for transactions of this type, including that, upon specified events of default occurring and continuing, either the Trustee or the holders of at least 25% in principal amount of the outstanding Notes may declare the principal amount of the Notes to be due and payable.

On June 18, 2014, the Company entered into Amendment No. 5, Incremental Amendment and Joinder Agreement ("Amendment No. 5") with, among others, the lenders party thereto (the "Incremental Lenders") and Credit Suisse AG, as administrative agent, amending that certain Credit Agreement dated as of April 29, 2011 and amended and restated as of March 6, 2013 (the "Existing Credit Agreement") with, among others, the lenders from time to time party thereto and Credit Suisse AG, as administrative agent and collateral agent. Pursuant to Amendment No. 5, the Revolving Credit Commitments (as defined in the Existing Credit Agreement) of the Incremental Lenders were increased by $100.0 million to $300.0 million and the Revolving Credit Termination Date (as defined in the Existing Credit Agreement) was extended by approximately six months to September 6, 2018.

The above description of the Indenture, the Notes, and Amendment No. 5 is a summary only and is qualified in its entirety by reference to the Base Indenture, the Supplemental Indenture (and the form of note included therein), and Amendment No. 5, which are attached as Exhibits 4.1, 4.2 and 10.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement of a Registrant.**

The information provided in response to Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

**Item 3.02. Unregistered Sales of Equity Securities.**

The Company used approximately $15.6 million of the net proceeds of the concurrent offerings to fund the cost of the convertible note hedge transactions (after such cost was partially offset by the proceeds to the Company from the warrant transactions) entered into in connection with the offering of the Notes with specified financial institutions, including certain of the Note Underwriters or their affiliates (the "Option Counterparties"). The convertible note hedge transactions cover, subject to anti-dilution adjustments, 6,205,160 shares of Common Stock, which is equal to the number of shares of Common Stock that initially underlie the Notes. Concurrently with entering into the convertible note hedge transactions, the Company also entered into the privately negotiated warrant transactions with the Option Counterparties, which warrants have an initial exercise price of $75.00 per share, which represents a premium of approximately 51% to the $49.59 per share closing price of the Common Stock on June 17, 2014.

The convertible note hedge and warrant transactions are expected to reduce the potential dilution with respect to the Common Stock upon conversion of the Notes; however, the warrant transactions could have a dilutive effect with respect to the Common Stock to the extent that the market price per share of the Common Stock exceeds the strike price of the warrants.

The Company offered and sold the warrants in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933 (the "Securities Act"). Neither the warrants nor the underlying shares of Common Stock issuable upon the conversion of the warrants have been registered under the Securities Act and neither may be offered or sold absent registration or an applicable exemption from registration requirements.

**Item 7.01. Regulation FD Disclosure.**

On June 18, 2014, the Company issued a press release announcing the closing of the concurrent offerings of Common Stock and Notes and discussing the expected impact of the offerings on the Company's non-GAAP fully diluted earnings per share guidance for the year ending January 31, 2015. A copy of the press release is attached as Exhibit 99.1 and is being furnished herewith and shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934.

**Item 9.01. Financial Statements and Exhibits.**

**(d) Exhibits**

| Exhibit No. | Description |
|---|---|
| 1.1 | Underwriting Agreement, dated June 12, 2014, between Verint Systems Inc. and Goldman, Sachs & Co., as representative of the several underwriters listed in Schedule A thereto. |
| 1.2 | Underwriting Agreement, dated June 12, 2014, between Verint Systems Inc. and Deutsche Bank Securities Inc., as representative of the several underwriters listed in Schedule A thereto. |
| 4.1 | Indenture, dated as of June 18, 2014, between Verint Systems Inc. and Wilmington Trust, National Association, as trustee. |
| 4.2 | First Supplemental Indenture, dated as of June 18, 2014, between Verint Systems Inc. and Wilmington Trust, National Association, as trustee. |
| 5.1 | Opinion of Jones Day. |
| 10.1 | Amendment No. 5, Incremental Amendment and Joinder Agreement dated June 18, 2014 to the Amended and Restated Credit Agreement, dated as of March 6, 2013, among Verint Systems Inc., as Borrower, the lenders from time to time party thereto, and Credit Suisse AG, as administrative agent and collateral agent. |
| 23.1 | Consent of Jones Day (included in Exhibit 5.1). |
| 99.1 | Press Release, dated June 18, 2014. |

**SIGNATURES**

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

**VERINT SYSTEMS INC.**

Date: June 18, 2014

By: /s/ Peter Fante
Name: Peter Fante
Title: Chief Legal Officer

## EXHIBIT INDEX

| Exhibit No. | Description |
|---|---|
| 1.1 | Underwriting Agreement, dated June 12, 2014, between Verint Systems Inc. and Goldman, Sachs & Co., as representative of the several underwriters listed in Schedule A thereto. |
| 1.2 | Underwriting Agreement, dated June 12, 2014, between Verint Systems Inc. and Deutsche Bank Securities Inc., as representative of the several underwriters listed in Schedule A thereto. |
| 4.1 | Indenture, dated as of June 18, 2014, between Verint Systems Inc. and Wilmington Trust, National Association, as trustee. |
| 4.2 | First Supplemental Indenture, dated as of June 18, 2014, between Verint Systems Inc. and Wilmington Trust, National Association, as trustee. |
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**Exhibit 1.1**

**EXECUTION VERSION**

**5,000,000 Shares**

**Verint Systems Inc.**

**Common Stock**

**UNDERWRITING AGREEMENT**

June 12, 2014

GOLDMAN, SACHS & CO.
As a representative of the several Underwriters (the "**Representative**"),

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

Dear Ladies and Gentlemen:

1. *Introductory.* Verint Systems Inc., a Delaware corporation (the "**Company**"), agrees with the several Underwriters named in Schedule A hereto ("**Underwriters**") to issue and sell to the several Underwriters 5,000,000 shares ("**Firm Securities**") of the Company's common stock, par value $0.001 per share ("**Securities**") and also proposes to issue and sell to the Underwriters, at the option of the Underwriters, an aggregate of not more than 750,000 additional shares ("**Optional Securities**") of its Securities as set forth below. The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities**". Concurrently with the issue and sale of the Offered Securities, the Company proposes to issue and sell up to U.S. $400,000,000 principal amount of its 1.50% Convertible Senior Notes due 2021 ("**Convertible Notes**"). The Company intends to use the net proceeds of the Offered Securities and the Convertible Notes, among other things, to repay outstanding debt under its revolving credit facility and senior secured term loan (the "**Paydown**").

In connection with the offering of the Firm Securities, the Company also intends to amend its credit facility by increasing the commitment under the revolving loan (the "**Credit Facility Amendment**"). The issuance and sale of the Offered Securities and the Convertible Notes, the convertible note hedge transactions and warrant transactions to be entered into in connection with the Convertible Notes, the Paydown and the Credit Facility Amendment are collectively referred to herein as the "**Concurrent Transactions**."

The Company hereby agrees with the several Underwriters as follows:

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms*. The Company has filed with the Commission (as defined below) a registration statement on Form S-3 (No. 333-196612), including a related prospectus or prospectuses, covering the registration of the Offered Securities under the Securities Act (as defined below), which has become automatically effective pursuant to Rule 462(e) under the Securities Act. "**Registration Statement**" at any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information with respect to such registration statement, that in any case has not been superseded or modified. "**Registration Statement**" without reference to a time means the Registration Statement as of the Effective Time (as defined below). For purposes of this definition, 430B Information shall be considered to be included in the Registration Statement as of the time specified in Rule 430B.

For purposes of this Agreement:

"**430B Information**" means information included in a prospectus then deemed to be a part of the Registration Statement pursuant to Rule 430B(e) or retroactively deemed to be a part of the Registration Statement pursuant to Rule 430B(f).

"**Applicable Time**" means 5:30 p.m. (New York time) on the date of this Agreement.

"**Closing Date**" has the meaning set forth in Section 3 hereof.

"**Commission**" means the Securities and Exchange Commission.

"**Effective Time**" of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

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

"**Final Prospectus**" means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Securities Act (such term, for the avoidance of doubt, includes the documents incorporated by reference therein).

"**General Disclosure Package**" has the meaning defined in Section 2(e) hereof.

"**General Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule B hereto.

"**Issuer Free Writing Prospectus**" means any "issuer free writing prospectus," as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"**Limited Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

"**Rules and Regulations**" means the rules and regulations of the Commission.

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

"**Securities Laws**" means, collectively, the Sarbanes-Oxley Act of 2002 ("**Sarbanes-Oxley**"), the Securities Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange and the NASDAQ Global Select Market ("**Exchange Rules**").

"**Statutory Prospectus**" with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information with respect to the Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

Unless otherwise specified, a reference to a "rule" is to the indicated rule under the Securities Act.

(b) *Compliance with Securities Act Requirements*. (i) (A) At the time the Registration Statement initially became effective, (B) at the Effective Time relating to the Offered Securities and (C) on the Closing Date, the Registration Statement conformed and will conform in all

respects to the requirements of the Securities Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on the Closing Date, the Final Prospectus will conform in all respects to the requirements of the Securities Act and the Rules and Regulations, and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) *Automatic Shelf Registration Statement*. (i) *Well-Known Seasoned Issuer Status*. (A) At the time of initial filing of the Registration Statement and (B) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a "well known seasoned issuer" as defined in Rule 405, including not having been an "ineligible issuer" as defined in Rule 405.

(ii) *Effectiveness of Automatic Shelf Registration Statement*. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405, that initially became effective upon filing in accordance with Rule 462(e) under the Securities Act within three years of the date of this Agreement.

(iii) *Eligibility to Use Automatic Shelf Registration Form*. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representative, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form satisfactory to the Representative, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Representative of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(iv) *Filing Fees*. The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(d) *Ineligible Issuer Status*. (i) At the earliest time after the filing of the Registration Statement that the Company made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Offered Securities and (ii) at the date of this Agreement, the Company was not and is not an "ineligible issuer," as defined in Rule 405.

(e) *Disclosure*. As of the date of this Agreement, the Final Prospectus does not, and as of any Closing Date, the Final Prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. At the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time,

the preliminary prospectus supplement, dated June 9, 2014, including the base prospectus, dated June 9, 2014 (collectively, including the documents incorporated by reference therein, the "**Preliminary Prospectus**", which is the most recent Statutory Prospectus distributed to investors generally), and the other information, if any, stated in Schedule B to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the "**General Disclosure Package**"), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included, or will include, any untrue statement of a material fact or omitted, or will omit, to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding two sentences do not apply to statements in or omissions from any Statutory Prospectus, the General Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus based upon written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof. Except as disclosed in the General Disclosure Package, on the date of this Agreement, the Company's Annual Report on Form 10-K for the year ended January 31, 2014 and the Company's Quarterly Report on Form 10-Q for the three months ended April 30, 2014 (collectively, the "**Exchange Act Reports**") which have been filed by the Company with the Commission or sent to shareholders pursuant to the Exchange Act and incorporated by reference in the General Disclosure Package and the Final Prospectus, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the Rules and Regulations.

(f) *Issuer Free Writing Prospectuses*. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus and at a time when a prospectus relating to the Offered Securities is (or but for the exceptions in Rule 172 would be) required to be delivered under the Securities Act by any Underwriter or dealer, there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (i) the Company has promptly notified or will promptly notify the Representative and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(g) *Good Standing of the Company*. The Company has been duly incorporated and is existing and in good standing under the laws of the state of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the financial condition, business, properties or results of operations of the Company and its subsidiaries, taken as a whole ("**Material Adverse Effect**").

(h) *Subsidiaries*. Each "significant subsidiary" as such term is defined in Rule 405 under the Securities Act (each, a "**Significant Subsidiary**" and collectively, the "**Significant Subsidiaries**") of the Company has been duly incorporated or formed, as applicable, and is existing and, if applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and each Significant Subsidiary of the Company is duly qualified to do business as a foreign corporation or limited liability company in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect; all of the issued and outstanding capital stock of each Significant Subsidiary has been duly authorized and validly issued and is fully paid and nonassessable; and the capital stock of each Significant Subsidiary, is owned free from liens, encumbrances and defects, except (i) as otherwise described in the General Disclosure Package and the Final Prospectus or (ii) where, individually or in the aggregate, the failure to be fully paid and non-assessable and to be owned directly or indirectly by the Company free from liens, encumbrances and defects would not reasonably be expected to have a Material Adverse Effect or a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

(i) *Corporate Structure*. The subsidiaries of the Company listed on Exhibit 21.1 to the Company's Annual Report on Form 10-K for year ended January 31, 2014 are all of the subsidiaries of the Company required to be so listed by Item 601(b)(21) of Regulation S-K as of January 31, 2014 and, except as specified on Schedule C hereto, as of the date hereof.

(j) *Offered Securities*. The Offered Securities and all other outstanding shares of capital stock of the Company have been duly authorized; the authorized equity capitalization of the Company is as set forth in the General Disclosure Package; all outstanding shares of capital stock of the Company are, and, when the Offered Securities have been delivered and paid for in accordance with this Agreement on each Closing Date, such Offered Securities will have been, validly issued, fully paid and nonassessable, will conform to the information in the General Disclosure Package and to the description of such Offered Securities contained in the Final Prospectus; the stockholders of the Company have no preemptive rights with respect to the Securities; and none of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder.

(k) *No Finder's Fee*. Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with the offering of the Offered Securities.

(l) *Registration Rights*. Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act (collectively, "**registration rights**"), and any person to whom the Company has granted registration rights has agreed not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5 hereof.

(m) *Listing*. The Offered Securities have been, or prior to the First Closing Date will be, approved for listing on the NASDAQ Global Select Market.

(n) *Absence of Further Requirements*. No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required to be obtained or made by the Company for the consummation of the Concurrent Transactions, except for (i) such as have been obtained or made by the Company and are in full force and effect, (ii) such as may be required under state securities or "Blue Sky" laws in connection with the offer and sale of the Offered Securities, and (iii) the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect or a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

(o) *Title to Property*. Except as disclosed in the General Disclosure Package or as would not have a Material Adverse Effect, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and except as disclosed in the General Disclosure Package or as would not have a Material Adverse Effect, the Company and its subsidiaries hold any leased real or personal property under valid and enforceable leases with no terms or provisions that would materially interfere with the use made or to be made thereof by them.

(p) *Absence of Defaults and Conflicts Resulting from Transaction*. The execution, delivery and performance of this Agreement (including, without limitation, the issuance and sale of the Offered Securities to the Underwriters) and the Concurrent Transactions, and compliance with the terms and provisions thereof will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter, by-laws or similar organizational document of the Company or any of its subsidiaries, (ii) any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, in the case of clauses (ii) and (iii) above, for such defaults or violations as would not have a Material Adverse Effect; a "**Debt Repayment Triggering Event**" means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(q) *Absence of Existing Defaults and Conflicts*. The Company is not in violation of its charter or by-laws, or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties is subject, except such defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

(e) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(s) *Possession of Licenses and Permits*. The Company and its subsidiaries possess, and are in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits ("**Licenses**") necessary or material to the conduct of the business now conducted or proposed in the General Disclosure Package to be conducted by them and have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(t) *Absence of Labor Dispute*. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company is imminent that could reasonably be expected to have a Material Adverse Effect.

(u) *Intellectual Property*. The Company and its subsidiaries own, possess, have sufficient rights to use or can acquire on commercially reasonable terms, all trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other intellectual property rights (collectively, "**Intellectual Property Rights**") necessary or material to the conduct of the business as now conducted by them, and the expected expiration of any such Intellectual Property Rights would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The conduct of the business of the Company and its subsidiaries has not conflicted with, infringed, misappropriated or otherwise violated, and the conduct of the business of the Company and its subsidiaries as proposed in the General Disclosure Package to be conducted by them is not reasonably expected to conflict with, infringe, misappropriate or otherwise violate, any Intellectual Property Rights of any third party except for such infringements, misappropriations or other violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The Company and its subsidiaries have not received any notice of infringement of, or conflict with, asserted rights of others with respect to any Intellectual Property Rights that, if determined adversely to the Company or its subsidiaries, would reasonably be expected to have a Material Adverse Effect. Except in each case as disclosed in the General Disclosure Package or as would not, if determined adversely to the Company or any of its subsidiaries, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect (i) there are no rights of third parties to any of the Intellectual Property Rights owned or purported to be owned by the Company or any of its subsidiaries; (ii) there is no infringement, misappropriation, breach, default or other violation, or the occurrence of any event that with notice or the passage of time would constitute any of the foregoing, by any third party of any of the Intellectual Property Rights of the Company or any of its subsidiaries; (iii) to the knowledge of the Company, all Intellectual Property Rights owned by the Company or any of its subsidiaries are valid and enforceable; (iv) none of the Intellectual Property Rights used by the Company or any of its subsidiaries in their respective businesses has been obtained or is being used by the Company or any of its subsidiaries in violation of any contractual obligation binding on the Company or any of its subsidiaries or in violation of the rights of any persons; and (v) the Company and its subsidiaries have taken commercially reasonable steps in accordance with normal industry practice to maintain the confidentiality of all Intellectual Property Rights the value of which to the Company or any of its subsidiaries is contingent on maintaining the confidentiality thereof.

(v) *Environmental Laws*. Except as disclosed in the General Disclosure Package, none of the Company or its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**environmental laws**"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and to the knowledge of the Company, there are no pending investigations which could reasonably be expected to lead to such a claim.

(w) *Accurate Disclosure*. The statements in the General Disclosure Package and the Final Prospectus under the headings "Description of Common Stock" and "Material U.S. Federal Income Tax Consequences to Non-U.S. Holders", insofar as such statements summarize the legal matters or agreements referred to therein, are accurate summaries of such legal matters or agreements in all material respects.

(x) *Absence of Manipulation.* None of the Company and its affiliates has, either alone or with one or more other persons, bid for or purchased for any account in which it or any of its affiliates had a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities.

(y) *Statistical and Market-Related Data*. Any third-party statistical and market-related data included in the General Disclosure Package, a Final Prospectus, or any Issuer Free Writing Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects.

(z) *Internal Controls and Compliance with the Sarbanes-Oxley Act*. Except as set forth in the General Disclosure Package, the Company and its Board of Directors (the "**Board**") are in compliance in all material respects with Sarbanes-Oxley and all applicable Exchange Rules. The Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an internal audit function, and legal and regulatory compliance controls (collectively, "**Internal Controls**"), that comply with the Securities Laws and are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles ("**GAAP**") and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls are overseen by the Audit Committee (the "**Audit Committee**") of the Board in accordance with Exchange Rules. Since the date of the Company's latest audited financial statements included in the General Disclosure Package, the Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 90 days the Company does not reasonably expect to publicly disclose or report to its Audit Committee or its Board, a significant deficiency, material weakness, change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls (each, an "**Internal Control Event**"), any violation of, or failure to comply with, the Securities Laws, or any matter which, in each case if determined adversely, would have a Material Adverse Effect.

(aa) *Litigation*. Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company or any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate be expected to have a Material Adverse Effect, or would be expected to materially and adversely affect the ability of the Company to perform their obligations under this Agreement; and to the knowledge of the Company, no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are currently threatened or contemplated.

(bb) *Financial Statements*. The financial statements of the Company and its consolidated subsidiaries included in the General Disclosure Package present fairly in all material respects the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and except as otherwise disclosed in the General Disclosure Package and the Final Prospectus, such financial statements have been prepared in conformity with GAAP applied on a consistent basis; and the assumptions used in preparing the pro forma financial statements included in the General Disclosure Package provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper

application of those adjustments to the corresponding historical financial statement amounts, in each case, in all material respects. The financial statements of Kay Technology Holdings, Inc. included in the General Disclosure Package present fairly in all material respects the financial position of Kay Technology Holdings, Inc. and its consolidated subsidiaries as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with GAAP. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the General Disclosure Package fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(cc) *Independent Accountants*. Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(dd) *No Material Adverse Change in Business*. Except as disclosed or contemplated by in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries, taken as a whole, that is material and adverse; (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(ee) *Investment Company Act*. The Company is not an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940 (the "**Investment Company Act**"); and after giving effect to the transactions contemplated by the Call Spread Confirmations and the offering and sale of the Offered Securities and the application of the proceeds of the offering as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act.

(ff) *Ratings*. No "nationally recognized statistical rating organization" as such term is defined in Section 3(a)(62) of the Exchange Act has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(c)(ii) hereof.

(gg) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries, nor any director, officer, agent, employee, nor, to the knowledge of the Company, agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has: (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**") or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed or requested any bribe, rebate, payoff, influence payment, kickback or other unlawful payment. The Company and its subsidiaries have conducted their

businesses on behalf of the Company and its subsidiaries, respectively, in compliance with the FCPA and instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the FCPA and all other applicable anti-bribery and anti-corruption laws.

(hh) *Compliance with Money Laundering Laws.* The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ii) *No Conflicts with Sanctions.* Neither the Company, nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf and at the direction of the Company or of its subsidiaries is currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority ("**Sanctions**"), nor is the Company nor any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Sudan and Syria (each, a "**Sanctioned Country**"); and the Company will not directly or indirectly use the proceeds of the Concurrent Transactions, or (i) lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person at the time of such lending, contributing or making, subject or target of any Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the Concurrent Transactions, where as an Underwriter, advisor, investor or otherwise) of Sanctions. For the past 5 years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(jj) *Taxes*. The Company and its subsidiaries have filed all federal, state, local and non-U.S. tax returns that are required to be filed or have requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect); and, except as set forth in the General Disclosure Package, the Company and its subsidiaries have paid all taxes (including any assessments, fines or penalties) required to be paid by them, except for any such taxes, assessments, fines or penalties currently being contested in good faith and for which adequate reserves have been provided in accordance with GAAP, or as would not have a Material Adverse Effect.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company agrees to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of $46.1385 per share, the respective number of shares of Firm Securities set forth opposite the names of the several Underwriters in Schedule A hereto.

The Company will deliver the Firm Securities to or as instructed by the Representative for the accounts of the several Underwriters in a form reasonably acceptable to the Representative against payment of the purchase price by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representative drawn to the order of the Company at the office of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 at 10:00 A.M., New York time, on

June 18, 2014, or at such other time not later than seven full business days thereafter as the Representative and the Company determine, such time being herein referred to as the "**First Closing Date**". For purposes of Rule 15c6-1 under the Securities Exchange Act of 1934, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. Delivery of the Firm Securities will be made through the facilities of the Depository Trust Company ("**DTC**") unless the Representative instructs otherwise.

In addition, upon written notice from the Representative given to the Company from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per Security to be paid for the Firm Securities. The Company agrees to sell to the Underwriters the number of shares of Optional Securities specified in such notice and the Underwriters agree, severally and not jointly, to purchase such Optional Securities. Such Optional Securities shall be purchased for the account of each Underwriter in the same proportion as the number of shares of Firm Securities set forth opposite such Underwriter's name bears to the total number of shares of Firm Securities (subject to adjustment by the Representative to eliminate fractions) and may be purchased by the Underwriters. No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representative to the Company.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an "**Optional Closing Date**", which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a "**Closing Date**"), shall be determined by the Representative but shall be not later than five full business days after written notice of election to purchase Optional Securities is given. The Company will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by the Representative for the accounts of the several Underwriters in a form reasonably acceptable to the Representative against payment of the purchase price therefor in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representative drawn to the order of the Company, at the above office of Davis Polk & Wardwell LLP. Delivery of the Optional Securities will be made through the facilities of the DTC unless the Representative instructs otherwise.

4. *Offering by Underwriters*. (a) It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

(b) In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), each of the Underwriters severally represents and agrees that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "**Relevant Implementation Date**") it has not made and will not make an offer of Offered Securities to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Offered Securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Offered Securities to the public in that Relevant Member State at any time:

(i) to legal entities which are qualified investors as defined in the Prospectus Directive;

(ii) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Underwriters for any such offer; or

(iii) in any other circumstances falling within Article 3 of the Prospectus Directive which do not require the publication by the Company of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Offered Securities to the public" in relation to any Offered Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Offered Securities to be offered so as to enable an investor to decide to purchase or subscribe the Offered Securities, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State; and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

(c) Each of the Underwriters severally represents and agrees that:

(i) (A) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (B) it has not offered or sold and will not offer or sell the Offered Securities other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Offered Securities would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "**FSMA**") by the Company;

(ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Offered Securities in circumstances in which Section 21(1) of the FSMA does not apply to the Company; and

(iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Offered Securities in, from or otherwise involving the United Kingdom.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Filing of Prospectuses.* The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by the Representative, subparagraph (5)) not later than the second business day following the earlier of the date it is first used or the execution and delivery of this Agreement. The Company has complied and will comply with Rule 433.

(b) *Filing of Amendments; Response to Commission Requests*. The Company will promptly advise the Representative of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus at any time and will offer the Representative a reasonable opportunity to comment on any such amendment or supplement; and the Company will also advise the Representative promptly of (i) the filing of any such amendment or supplement, (ii) any request by the Commission or its staff for any amendment to the Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iii) the institution by the

Commission of any stop order proceedings in respect of the Registration Statement or the threatening of any proceeding for that purpose, and (iv) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws*. If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Securities Act, the Company will promptly notify the Representative of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representative, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representative's consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Rule 158.* As soon as practicable, but not later than 16 months after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Securities Act and Rule 158.

(e) *Furnishing of Prospectuses*. The Company will furnish to the Representative copies of the Registration Statement, including all exhibits, any Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exception in Rule 172 would be) required to be delivered under the Securities Act, the Final Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Representative reasonably requests. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications*. The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions in the United States and Canada as the Representative designates and will continue such qualifications in effect so long as required for the resale of the Offered Securities by the Underwriters, provided that the Company will not be required to qualify as a foreign corporation or to file a general consent to service of process in any such state.

(g) *Reporting Requirements*. During the period of three years hereafter, the Company will furnish, upon request, to the Representative and to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to shareholders for such year; and the Company will furnish, upon request, to the Representative and to each of the other Underwriters (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to shareholders, and (ii) from time to time, such other information concerning the Company as the Representative may reasonably request, *provided*, that, if the Representative shall request nonpublic confidential information, the Company shall only be required to provide the Representative with such information if the Representative shall enter into a customary confidentiality agreement with the Company with respect thereto. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**"), it is not required to furnish such reports or statements to the Representative or the other Underwriters.

(h) *Payment of Expenses*. The Company will pay all expenses incidental to the performance of its obligations under this Agreement, including but not limited to (i) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities, the preparation and printing of this Agreement, the Offered Securities, the Preliminary Prospectus, any other documents comprising any part of the General Disclosure Package, the Final Prospectus, all amendments and supplements thereto, each Issuer Free Writing Prospectus and any other document relating to the issuance, offer, sale and delivery of the Offered Securities; (ii) the cost of any advertising approved by the Company in connection with the issue of the Offered Securities; (iii) any expenses (including reasonable fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions in the United States and Canada as the Representative designates and the preparation and printing of memoranda relating thereto, any fees charged by investment rating agencies for the rating of the Securities, (iv) expenses incurred in distributing the Preliminary Prospectus, any other documents comprising any part of the General Disclosure Package, the Final Prospectus (including any amendments and supplements thereto) and any Issuer Free Writing Prospectus to the Underwriters, (v) expenses incurred from listing of the Offered Securities on the NASDAQ Global Select Market and (vi) the Company's costs and expenses relating to investor presentations on any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company, including the cost of chartering of airplanes (if applicable) and the use of any private aircraft for purposes of the roadshow.

(i) *Use of Proceeds*. The Company will use the net proceeds received in connection with this offering in the manner described in the "Use of Proceeds" section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(j) *Absence of Manipulation*. The Company will not take, directly or indirectly, any action designed to or that would constitute or that could reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(k) *Company Lockup*. During the period beginning on the date hereof and continuing to the date that is 90 days after the date of this Agreement, without the prior written consent of the Representative, the Company will not directly or indirectly, sell, offer, contract to sell or otherwise dispose of, except as provided hereunder, any securities of the Company (or guaranteed by the Company) that are substantially similar to the Offered Securities, or any Offered Securities, or grant any option to sell, pledge, transfer or establish an open "put equivalent position" or liquidate or decrease a "call equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of), or announce the offering of, or file any registration statement under the Securities Act in respect of, any shares of Securities, options or warrants to acquire shares of the Securities or securities exchangeable or exercisable for or convertible into the Offered Securities or shares of Securities; *provided*, *however*, that the Company may issue shares of its Securities or options to purchase its Securities, or Securities upon exercise of options, pursuant to any stock option, stock bonus or other stock plan or arrangement described in the General Disclosure Package and Final Prospectus, *provided*, *further*, that the foregoing shall not apply to (i) the sale of the Offered Securities under this Agreement, the sale of the Convertible Notes or the issuance of any Securities upon conversion of the Convertible Notes and (ii) the entry into, or the issuance by the Company of any Securities upon exercise and settlement or termination of, the warrant transactions referred to in the definition of "Concurrent Transactions".

6. *Free Writing Prospectuses*. The Company represents and agrees that, unless it obtains the prior consent of the Representative, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representative, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representative is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

7. *Conditions of the Obligations of the Underwriters*. The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company herein (as though made on such Closing Date), to the accuracy of the statements of officers of the Company made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent (references to the Closing Date in this Section 7 shall apply to any Optional Closing Date, if applicable):

(a) *Accountants' Comfort Letters*. The Representative shall have received letters, dated, respectively, the date hereof on the General Disclosure Package and the Closing Date on the Final Prospectus, of (i) Deloitte & Touche LLP confirming that they are a registered public accounting firm and independent public accountants with respect to the Company within the meaning of the Securities Laws and in form and substance reasonably satisfactory to the Representative (except that, in any letter dated on the Closing Date, the "cut-off" date shall be a date no more than three days prior to such Closing Date) and (ii) BDO USA, LLP confirming that they are independent accountants with respect to the Kay Technology Holdings, Inc. in form and substance reasonably satisfactory to the Representative (except that, in any letter dated on the Closing Date, the "cut-off" date shall be a date no more than three days prior to such Closing Date).

(b) *Filing of Prospectus*. The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. No stop order suspending the effectiveness of the Registration Statement or of any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or any Underwriter, shall be contemplated by the Commission.

(c) *No Material Adverse Change*. Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries taken as a whole which, in the judgment of the Representative, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities or preferred stock of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Section 3(a)(62) of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representative, impractical to market or to enforce contracts for the sale

of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market, (iv) any suspension or material limitation of trading in securities generally on the NASDAQ Global Select Market, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on the NASDAQ Global Select Market or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representative, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it in the judgment of the Representative impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion of Counsel for Company and General Counsel for Company*. The Representative shall have received (i) an opinion, dated the Closing Date, of Jones Day, counsel for the Company, substantially in the form attached as Exhibit A hereto, and (ii) an opinion, dated the Closing Date, of Peter Fante, Chief Legal Officer of the Company, substantially in the form attached as Exhibit B hereto.

(e) *Opinion of Counsel for Underwriters*. The Representative shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to such matters as the Representative may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(f) *Officers' Certificate*. The Representative shall have received certificates, dated the Closing Date, of an executive officer or president of the Company and a principal financial or accounting officer of the Company in which such officers shall state that the representations and warranties of the Company in this Agreement are true and correct as of such date, that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date, that no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after inquiry are contemplated by the Commission, and that, subsequent to the dates of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(g) *Lockup Letters*. On or prior to the date hereof, the Representative shall have received lockup letters in the form of Exhibit C from each of the executive officers and directors of the Company listed on Schedule D.

(h) *Listing*. An application for the listing of the Offered Securities shall have been approved by the NASDAQ Global Select Market, subject to official notice of issuance.

Documents described as being "in the agreed form" are documents which are in the forms which have been initialed for the purpose of identification by Davis Polk & Wardwell LLP, copies of which are held by the Company and the Representative, with such changes as the Representative may approve.

The Company will furnish the Representative with such conformed copies of such opinions, certificates, letters and documents as the Underwriters reasonably request. The Representative may in its sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder in respect of any Closing Date.

8. *Indemnification and Contribution*. (a) *Indemnification of Underwriters*. The Company will indemnify and hold harmless each Underwriter, its officers, employees, agents, partners, members, directors and its affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "**Indemnified Party**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating, preparing or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto) whether threatened or commenced and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information consists of the information described as such in subsection (b) below.

(b) *Indemnification of Company*. Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and officers, each of the Company's affiliates and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "**Underwriter Indemnified Party**"), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating, preparing or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto) whether threatened or commenced based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Preliminary and Final Prospectus furnished on behalf of each Underwriter under the caption "Underwriting (Conflicts of Interest)": paragraphs five, six, eleven, twelve, fourteen and fifteen; *provided*, *however*, that the Underwriters shall not be liable for any losses, claims, damages or liabilities arising out of or based upon the Company's failure to perform its obligations under Section 5(a) of this Agreement.

(c) *Actions against Parties; Notification*. Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and

provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, unless (i) the indemnifying person and the indemnified person shall have mutually agreed to the contrary; (ii) the indemnifying person has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified person; (iii) the indemnified person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the indemnifying person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the indemnifying person and the indemnified person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) *Contribution*. If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total discounts and commissions received by the Underwriters from the Company under this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(d). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First Closing Date or any Optional Closing Date and the aggregate number of shares of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total principal amount of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, the Representative may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by the relevant Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of shares of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to the Representative and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10; *provided* that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination. As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, rights of contribution, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If this Agreement is terminated pursuant to Section 9 or if for any reason the purchase of the Offered Securities by the Underwriters is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Company and the Underwriters pursuant to Section 8 shall remain in effect. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 9, the Company will reimburse the Underwriters for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, except as otherwise agreed by the Company and any of the Underwriters in writing.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters will be mailed, delivered or telegraphed and confirmed to the Underwriters, c/o Goldman, Sachs & Co., 200 West Street, New York, New York 10282, Attention: Registration Department; or, if sent to the Company, will be mailed, delivered or e-mailed and confirmed to it at Verint Systems Inc., 330 South Service Road, Melville, New York 11747, Attention: Alan Roden, Corporate Treasurer, Alan.Roden@verint.com; provided, however, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, employees, agents, partners, members, directors, affiliates and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representative will act for the several Underwriters in connection with this offering, and, except as otherwise specified in another section of this Agreement, any action under this Agreement taken by the Representative will be binding upon all the Underwriters.

14. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

15. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) *No Other Relationship*. The Representative has been retained solely to act as an underwriter in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company and the Representative has been created in respect of any of the transactions contemplated by this Agreement or the Preliminary Prospectus or Final Prospectus, irrespective of whether the Representative has advised or is advising the Company on other matters;

(b) *Arms'-Length Negotiations*. The price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms'-length negotiations with the Representative and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose*. The Company has been advised that the Representative and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representative has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver*. The Company waives, to the fullest extent permitted by law, any claims it may have against the Representative for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representative shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

**16. *Applicable Law.* This Agreement and any claim, controversy or dispute arising under or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

If the foregoing is in accordance with the Representative's understanding of our agreement, kindly sign and return to us one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

Verint Systems Inc.

By: /s/ Peter Fante
Name: Peter Fante
Title: Chief Legal Officer

The foregoing Underwriting Agreement
is hereby confirmed and accepted
as of the date first above written.

GOLDMAN, SACHS & CO.

By: /s/ Daniel M. Young
Authorized Signatory

Acting on behalf of itself
and as the Representative of
the several Underwriters

**SCHEDULE A**

| Underwriter | Amount of Firm Securities |
|---|---|
| Goldman, Sachs & Co. | 1,556,000 |
| Credit Suisse Securities (USA) LLC | 533,500 |
| Deutsche Bank Securities Inc | 533,500 |
| J.P. Morgan Securities LLC | 533,500 |
| RBC Capital Markets, LLC | 533,500 |
| Barclays Capital Inc. | 379,000 |
| Jefferies LLC | 379,000 |
| FBR Capital Markets & Co. | 223,500 |
| Oppenheimer & Co. Inc | 223,500 |
| Imperial Capital, LLC | 105,000 |
| Total | 5,000,000 |

**SCHEDULE B**

**1. General Use Free Writing Prospectuses (included in the General Disclosure Package)**

"General Use Issuer Free Writing Prospectus" includes each of the following documents:

Free writing prospectus, dated June 9, 2014 (launch press release)

Free writing prospectus, dated June 12, 2014 (pricing press release)

Free writing prospectus, dated June 12, 2014 (term sheet)

**2. Other Information Included in the General Disclosure Package**

The following information is also included in the General Disclosure Package:

None.

**SCHEDULE C**

**Subsidiaries of Verint Systems Inc.**
(Bring-down Supplement to Exhibit 21.1 to Form 10-K for the year ended January 31, 2014)

**NEW SUBSIDIARIES OF THE COMPANY**

| Name | Jurisdiction of Incorporation or Organization |
|---|---|
| Broadbase Software, Inc. | Delaware |
| Ciboodle Customer Interaction Solutions South Africa (PTY) Ltd. | South Africa |
| Ciboodle Inc. | Delaware |
| Ciboodle Ireland Ltd. | Ireland |
| Ciboodle (Land and Estates) Ltd. | United Kingdom |
| Ciboodle Ltd. | United Kingdom |
| Ciboodle PTY Ltd. | Australia |
| Edgar Acquisition Company Limited | United Kingdom |
| Graham Technology BV | Netherlands |
| Graham Technology Ltd | United Kingdom |
| KANA Benelux BV | Netherlands |
| KANA Software BV | Netherlands |
| KANA Software Canada, Ltd | Canada |
| KANA Software, Inc. | Delaware |
| KANA Software Ireland Limited | Ireland |
| KANA Software Ireland No. 2 Limited | Ireland |
| KANA Software KK | Japan |
| KANA Software Limited | United Kingdom |
| KANA Solutions Limited | United Kingdom |
| KAY Technology Holdings, Inc. | Delaware |
| Lagan Technologies (Canada) Inc. | Canada |
| Lagan Technologies, Inc. | Delaware |
| Lagan Technologies Limited | United Kingdom |
| Overtone, Inc. | Delaware |
| Permadeal Limited | Cyprus |
| PT Ciboodle Indonesia | Indonesia |
| Sword Soft, Inc. | Delaware |
| Teletrain Verint B.V. | Netherlands |
| Triniventures BV | Netherlands |
| Trinicom Belgie NV | Belgium |
| Trinicom Duetschland Gmbh | Germany |
| Trinicom UK Ltd | United Kingdom |
| UTX Technologies Limited | Cyprus |
| Verint Acquisition LLC | Delaware |
| Verint Systems Holdings B.V. | Netherlands |
| Verint Systems Taiwan Ltd. | Taiwan, ROC |

**ENTITIES THAT HAVE CEASED TO BE THE COMPANY'S SUBSIDIARIES**

| Name | Jurisdiction of Incorporation or Organization |
|---|---|
| Global Management Technologies Europe Limited | United Kingdom |
| Iontas Inc. | Delaware |
| Rontal USA Inc. | Delaware |
| Verint Blue Pumpkin Software LLC | Delaware |

**SCHEDULE D**

**The Officers and Directors of the Company subject to a Lockup Agreement**

| Name | Position |
|---|---|
| Dan Bodner | President, Chief Executive Officer, Corporate Officer, and Director |
| Victor DeMarines | Chairman of the Board |
| John Egan | Director |
| Larry Myers | Director |
| Richard Nottenburg | Director |
| Howard Safir | Director |
| Earl Shanks | Director |
| Douglas Robinson | Chief Financial Officer and Corporate Officer |
| Elan Moriah | President, Enterprise Intelligence Solutions and Video and Situation Intelligence Solutions and Corporate Officer |
| Meir Sperling | Chief Strategy Officer and Corporate Officer |
| Peter Fante | Chief Legal Officer, Chief Compliance Officer, and Corporate Officer |

**EXHIBIT C**

**Form of Lockup Letter**

June , 2014

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

as the Representative as the term is defined in the Underwriting Agreement relating to the Offering

Re: Verint Systems Inc. (the "Company")

Ladies and Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of common stock of the Company, $0.001 par value ("Common Stock") or securities convertible into or exchangeable or exercisable for Common Stock. The Company proposes to carry out an offering of Common Stock (the "Offering"), for which you will act as the representative of the underwriters (in such capacity, the "Representative"). The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company. The undersigned acknowledges that you and the other underwriters are relying on the representations and agreements of the undersigned contained in this letter in carrying out the Offering and in entering into purchase arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not, (and will cause any spouse or immediate family member of the spouse or the undersigned living in the undersigned's household not to), without the prior written consent of Goldman, Sachs & Co. (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including without limitation any short sale), pledge, transfer, establish an open "put equivalent position" or liquidate or decrease a "call equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise dispose of or transfer (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of) including the filing (or participation in the filing of) of a registration statement with the Securities and Exchange Commission in respect of, any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock (collectively, the "Lock-Up Securities") currently or hereafter owned either of record or beneficially (as defined in Rule 13d-3 under the Exchange Act) by the undersigned (or such spouse or family member), or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 90 days after the date of the final prospectus supplement for the Offering (the "Lock-Up Period"), except (A) any transfer of Lock-Up Securities pursuant to a sale of 100% of the outstanding shares of Common Stock (including, without limitation, a tender offer or by way of merger of the Company with another person) to a third party or group of third parties that are not affiliates of the Company, *provided* that the opportunity to participate in such sale, tender offer, merger or other such transaction is offered to all holders of shares of Common Stock or, with respect to any statutory merger of consolidation in which the Company is a constituent company, the participation of holders of shares of Common Stock is not voluntary (or is otherwise pursuant to an exercise of dissenters' rights applicable to any such statutory merger or consolidation); (B) any sale or transfer of Lock-Up Securities up to, in the aggregate, the lesser of (i) 10,000 shares of Common Stock or (ii) 10% of the shares of Common Stock beneficially owned by the undersigned as of the date hereof (as determined in accordance with Rule 13d-3 of the Exchange Act); (C) any transfer of Lock-Up Securities as a bona fide gift, (D) any transfer of Lock-Up Securities to a trust for the benefit of the undersigned and/or any "immediate family member" (as defined in Rule 16a-1 under the Exchange Act) of the undersigned,

(E) the exercise of any option to purchase Lock-Up Securities that was granted under and in accordance with any Company employee benefit plan, qualified stock option plan or other director or employee compensation plan, or any agreement existing pursuant to such a plan, including the transfer to the Company of Lock-Up Securities underlying such options solely to pay the exercise price or any withholding taxes in connection with the exercise thereof on a "cashless" or net settlement basis (it being understood that such purchased Lock-Up Securities, after giving effect to the "cashless" or net settlement exercise of options, shall remain subject to this agreement), (F) any transfer to the Company of Lock-Up Securities underlying restricted stock and restricted stock unit grants solely to pay any withholding taxes in connection with the scheduled vesting thereof on a "cashless" or net settlement basis and (G) the sale of any Lock-Up Securities acquired by the undersigned in the open market; *provided* that, in the case of any transfer pursuant to clause (C) or (D), (x) the transferee agrees in writing to be bound by the terms of this agreement, (y) such transfer does not require any filing by the undersigned under the Exchange Act and (z) no voluntary filing relating to such transfer may be made by the undersigned other than a filing on a Form 5 made after the expiration of the Lock-Up Period. The foregoing shall not apply to transfers or sales of Common Stock pursuant to any contract, instruction or plan, including a contract, instruction or plan complying with Rule 10b5-1 of the Exchange Act, that has been entered into by the undersigned prior to the date of this agreement.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock held by the undersigned except in compliance with the foregoing restrictions.

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives, and assigns of the undersigned.

[*signature page follows*]

Very truly yours,

Name:
Title:

[Verint Systems Inc. lockup agreement signature page – equity offering]

**Exhibit 1.2**

**EXECUTION VERSION**

**Verint Systems Inc.**

**$350,000,000 1.50% Senior Convertible Notes due 2021**

**UNDERWRITING AGREEMENT**

June 12, 2014

DEUTSCHE BANK SECURITIES INC.
As a representative of the several Underwriters (the "**Representative**"),

c/o Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005

Dear Ladies and Gentlemen:

1. *Introductory.* Verint Systems Inc., a Delaware corporation (the "**Company**"), agrees with Deutsche Bank Securities Inc. (the "**Representative**") and the several Underwriters named in Schedule A hereto (the "**Underwriters**") subject to the terms and conditions stated herein, to issue and sell to the several Underwriters, and the Underwriters agree to purchase from the Company, U.S.$350,000,000 principal amount of the Company's 1.50% Senior Convertible Notes due 2021 ("**Firm Securities**"). In addition, the Company has granted to the Underwriters an option to purchase up to an additional $50,000,000 in aggregate principal amount of its 1.50% Senior Convertible Notes due 2021 (the "**Optional Securities**" and, together with the Firm Securities, the "**Offered Securities**"). The Offered Securities will be issued under an indenture, dated as of June 18, 2014 as supplemented by a first supplemental indenture dated as of June 18, 2014 (as so supplemented, the "**Indenture**"), in each case, between the Company and Wilmington Trust, National Association, as Trustee, and will be convertible on the terms, and subject to the conditions, set forth in the Indenture. The Offered Securities will be convertible into cash, shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**"), or a combination of cash and Conversion Shares at the option of the Company as set forth in the Indenture. As used herein, "**Conversion Shares**" means the shares of Common Stock, if any, to be received by the holders of the Offered Securities upon conversion of the Offered Securities pursuant to the terms of the Indenture. The Offered Securities and the Conversion Shares, if any, issuable upon conversion thereof will be offered and sold to the Underwriters without being registered under the Securities Act of 1933, as amended (the "**Securities Act**"), in reliance on exemptions therefrom. Concurrently with the issue and sale of the Offered Securities, the Company proposes to issue and sell up to 5,000,000 shares of its Common Stock, or 5,750,000 shares of its Common Stock if the underwriters under the related underwriting agreement exercise their greenshoe option (collectively, the "**Shares**"). The Company intends to use the net proceeds of the Offered Securities and the Shares, among other things, to repay outstanding debt under its revolving credit facility and senior secured term loan (the "**Paydown**").

In connection with the offering of the Firm Securities, the Company is separately entering into convertible note hedge transactions and warrant transactions with one or more counterparties, which may include one or more of the Underwriters or their respective affiliates (each, a "**Call Spread Counterparty**"), in each case, pursuant to a convertible note hedge confirmation (each, a "**Base Bond Hedge Confirmation**") and a warrant confirmation (each, a "**Base Warrant Confirmation**"), respectively, each dated the date hereof (the Base Bond Hedge Confirmations and the Base Warrant Confirmations, collectively, the "**Base Call Spread Confirmations**"), and in connection with the issuance of any Optional Securities, the Company and each Call Spread Counterparty may enter into an additional convertible note hedge transaction and an additional warrant transaction pursuant to an additional convertible note hedge confirmation (each, an "**Additional Bond Hedge Confirmation**") and an additional warrant confirmation (each, an "**Additional Warrant Confirmation**"), respectively, each to be dated the

date on which the option granted to the Underwriters pursuant to Section 3 to purchase such Optional Securities is exercised (the Additional Bond Hedge Confirmations and the Additional Warrant Confirmations, collectively, the "**Additional Call Spread Confirmations**" and, together with the Base Call Spread Confirmations, the "**Call Spread Confirmations**").

In connection with the offering of the Firm Securities, the Company also intends to amend its credit facility by increasing the commitment under the revolving loan (the "**Credit Facility Amendment**"). The issuance and sale of the Offered Securities and the Shares, the convertible note hedge transactions and warrant transactions described in the immediately preceding paragraph, the Paydown and the Credit Facility Amendment are collectively referred to herein as the "**Concurrent Transactions**."

The Company hereby confirms its engagement of Goldman, Sachs & Co. as, and Goldman, Sachs & Co. hereby confirms its agreement with the Company to render services as, a "qualified independent underwriter" within the meaning of Rule 5121 of the Financial Industry Regulatory Authority ("**FINRA**") with respect to the offering and sale of the Offered Securities. Goldman, Sachs & Co., in its capacity as qualified independent underwriter and not otherwise, is referred to herein as the "**QIU**".

The Company hereby agrees with the several Underwriters as follows:

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms*. The Company has filed with the Commission (as defined below) a registration statement on Form S-3 (No. 333-196612), including a related prospectus or prospectuses, covering the registration of the Offered Securities under the Securities Act (as defined below), which has become automatically effective pursuant to Rule 462(e) under the Securities Act. "**Registration Statement**" at any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information with respect to such registration statement, that in any case has not been superseded or modified. "**Registration Statement**" without reference to a time means the Registration Statement as of the Effective Time (as defined below). For purposes of this definition, 430B Information shall be considered to be included in the Registration Statement as of the time specified in Rule 430B.

For purposes of this Agreement:

"**430B Information**" means information included in a prospectus then deemed to be a part of the Registration Statement pursuant to Rule 430B(e) or retroactively deemed to be a part of the Registration Statement pursuant to Rule 430B(f).

"**Applicable Time**" means 5:30 p.m. (New York time) on the date of this Agreement.

"**Closing Date**" has the meaning set forth in Section 3 hereof.

"**Commission**" means the Securities and Exchange Commission.

"**Effective Time**" of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

"**Exchange Act**" means the United States Securities Exchange Act of 1934 as amended.

"**Final Prospectus**" means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Securities Act (such term, for the avoidance of doubt, includes the documents incorporated by reference therein).

"**General Disclosure Package**" has the meaning defined in Section 2(e) hereof.

"**General Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B hereto.

"**Issuer Free Writing Prospectus**" means any "issuer free writing prospectus," as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"**Limited Use Issuer Free Writing Prospectus**" means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

"**Rules and Regulations**" means the rules and regulations of the Commission.

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

"**Securities Laws**" means, collectively, the Sarbanes-Oxley Act of 2002 ("**Sarbanes-Oxley**"), the Securities Act, the Exchange Act, the Trust Indenture Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange and the NASDAQ Global Select Market ("**Exchange Rules**").

"**Statutory Prospectus**" with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information with respect to the Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

"**Subsequent Closing Date**" means the time and date of delivery of Optional Securities by the Company to the Underwriters, if subsequent to the Closing Date.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939.

Unless otherwise specified, a reference to a "rule" is to the indicated rule under the Securities Act.

(b) *Compliance with Securities Act Requirements*. (i) (A) At the time the Registration Statement initially became effective, (B) at the Effective Time relating to the Offered Securities and (C) on the Closing Date, the Registration Statement conformed and will conform in all respects to the requirements of the Securities Act, the Trust Indenture Act and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on the Closing Date, the Final Prospectus will conform in all respects to the requirements of the Securities Act, the Trust Indenture Act and the Rules and Regulations, and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) *Automatic Shelf Registration Statement*. (i) *Well-Known Seasoned Issuer Status*. (A) At the time of initial filing of the Registration Statement and (B) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a "well known seasoned issuer" as defined in Rule 405, including not having been an "ineligible issuer" as defined in Rule 405.

(ii) *Effectiveness of Automatic Shelf Registration Statement*. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405, that initially became effective upon filing in accordance with Rule 462(e) under the Securities Act within three years of the date of this Agreement.

(iii) *Eligibility to Use Automatic Shelf Registration Form*. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representative, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form satisfactory to the Representative, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Representative of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(iv) *Filing Fees*. The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(d) *Ineligible Issuer Status*. (i) At the earliest time after the filing of the Registration Statement that the Company made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Offered Securities and (ii) at the date of this Agreement, the Company was not and is not an "ineligible issuer," as defined in Rule 405.

(e) *Disclosure*. As of the date of this Agreement, the Final Prospectus does not, and as of any Closing Date, the Final Prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. At the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time, the preliminary prospectus supplement, dated June 9, 2014, including the base prospectus, dated June 9, 2014 (collectively, including the documents incorporated by reference therein, the "**Preliminary Prospectus**"), (which is the most recent Statutory Prospectus distributed to investors generally), and the other information, if any, stated in Schedule B to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the "**General Disclosure Package**"), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included, or will include, any untrue statement of a material fact or omitted, or will omit, to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding two sentences do not apply to statements in or omissions from any Statutory Prospectus, the General Disclosure Package, the Final Prospectus or any Issuer Free Writing Prospectus based upon written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof. Except as disclosed in the General Disclosure Package, on the date of this Agreement, the Company's Annual Report on Form 10-K for the year ended

January 31, 2014 and the Company's Quarterly Report on Form 10-Q for the three months ended April 30, 2014 (collectively, the "**Exchange Act Reports**") which have been filed by the Company with the Commission or sent to shareholders pursuant to the Exchange Act and incorporated by reference in the General Disclosure Package and the Final Prospectus, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the Rules and Regulations.

(f) *Issuer Free Writing Prospectuses*. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus and at a time when a prospectus relating to the Offered Securities is (or but for the exceptions in Rule 172 would be) required to be delivered under the Securities Act by any Underwriter or dealer, there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (i) the Company has promptly notified or will promptly notify the Representative and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(g) *Good Standing of the Company*. The Company has been duly incorporated, and is existing and in good standing under the laws of the state of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the financial condition, business, properties or results of operations of the Company and its subsidiaries, taken as a whole ("**Material Adverse Effect**").

(h) *Subsidiaries*. Each "significant subsidiary" as such term is defined in Rule 405 under the Securities Act, (each, a "**Significant Subsidiary**" and collectively, the "**Significant Subsidiaries**") of the Company has been duly incorporated or formed, as applicable, and is existing and, if applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and each Significant Subsidiary of the Company is duly qualified to do business as a foreign corporation or limited liability company in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect; all of the issued and outstanding capital stock of each Significant Subsidiary has been duly authorized and validly issued and is fully paid and nonassessable; and the capital stock of each Significant Subsidiary is owned free from liens, encumbrances and defects, except (i) as otherwise described in the General Disclosure Package and the Final Prospectus or (ii) where, individually or in the aggregate, the failure to be fully paid and non-assessable and to be owned directly or indirectly by the Company free from liens, encumbrances and defects would not reasonably be expected to have a Material Adverse Effect or a material adverse effect on the ability of the Company to perform its obligations under the Indenture and the Offered Securities.

(i) *Corporate Structure*. The subsidiaries of the Company listed on Exhibit 21.1 to the Company's Annual Report on Form 10-K for year ended January 31, 2014 are all of the subsidiaries of the Company required to be so listed by Item 601(b)(21) of Regulation S-K as of January 31, 2014 and, except as specified on Schedule D hereto, as of the date hereof.

(j) *Capitalization; Conversion Shares*. The Common Stock has been duly authorized; the authorized equity capitalization of the Company is as set forth in the General Disclosure Package; all outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, and conform to the information in the General Disclosure Package and to the description of the Common Stock contained in the Final Prospectus; the stockholders of the Company have no preemptive rights with respect to the Common Stock; and none of the outstanding shares of capital stock of the Company have been issued in violation of any preemptive or similar rights of any security holder. The maximum number of Conversion Shares (assuming physical settlement of all conversions and including any shares of Common Stock issuable in connection with a "make-whole adjustment event", as such term is defined in the Indenture) have been duly authorized and reserved and, when issued upon exercise of the Offered Securities in accordance with the terms of the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of such Conversion Shares will not be subject to any preemptive or similar rights. The Conversion Shares, when issued upon exercise of the Offered Securities in accordance with the terms of the Indenture, will conform to the information in the General Disclosure Package and to the description of the Common Stock contained in the Final Prospectus.

(k) *Indenture; the Offered Securities*. The Indenture has been duly authorized and, when executed and delivered by the Company (assuming due authorization, execution and delivery by the Trustee), will constitute a valid and legally binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Offered Securities have been duly authorized by the Company; and when the Firm Securities are delivered and paid for pursuant to this Agreement on the Closing Date and when the Optional Securities are delivered and paid for pursuant to this Agreement on the Closing Date or any Subsequent Closing Date, as applicable, such Firm Securities and Optional Securities, as the case may be, and when executed by the Company and authenticated by the Trustee in accordance with the provisions of the Indenture, and when delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and entitled to the benefits provided by the Indenture. The Indenture and the Offered Securities will conform in all material respects to the information in the General Disclosure Package and the descriptions contained in the Final Prospectus.

(l) *Call Spread Confirmations.* The Base Call Spread Confirmations have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by each of the Call Spread Counterparties, will constitute valid and legally binding agreements of the Company, enforceable against the Company in accordance with their terms, and any Additional Call Spread Confirmations will, on or prior to the date such Additional Call Spread Confirmations are entered into, have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by each of the Call Spread Counterparties, will constitute valid and legally binding agreements of the Company, enforceable against the Company in accordance with their terms, subject in each case to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(m) *Warrant Securities.* The maximum number of shares of Common Stock of the Company issuable upon exercise and settlement or termination of the warrants issued pursuant to the Base Warrant Confirmations and any Additional Warrant Confirmations have been duly authorized and reserved and, when issued upon exercise of such warrants in accordance with the terms of such warrants, will be validly issued, fully paid and non-assessable, and the issuance of the Warrant Securities will not be subject to any preemptive or similar rights.

(n) *No Finder's Fee*. Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with the offering of the Offered Securities (other than in connection with advisory fees payable to Centerview Capital).

(o) *Registration Rights*. Except as disclosed in the General Disclosure Package and, except as may be contemplated by the Call Spread Confirmations, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act (collectively, "registration rights"), and any person to whom the Company has granted registration rights has agreed not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5 hereof.

(p) *Absence of Further Requirements*. No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required to be obtained or made by the Company for the consummation of the Concurrent Transactions, except for (i) such as have been obtained or made by the Company and are in full force and effect, (ii) such as may be required under state securities or "Blue Sky" laws in connection with the offer and sale of the Offered Securities, and (iii) the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect or a material adverse effect on the ability of the Company to perform its obligations under the Indenture or the Offered Securities.

(q) *Title to Property*. Except as disclosed in the General Disclosure Package or as would not have a Material Adverse Effect, the Company and its subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and except as disclosed in the General Disclosure Package or as would not have a Material Adverse Effect, the Company and its subsidiaries hold any leased real or personal property under valid and enforceable leases with no terms or provisions that would materially interfere with the use made or to be made thereof by them.

(r) *Absence of Defaults and Conflicts Resulting from Transaction*. The execution, delivery and performance of the Indenture, the Offered Securities, this Agreement, the Call Spread Confirmations, the Paydown and the Credit Facility Amendment (including, without limitation, the issuance and sale of the Offered Securities to the Underwriters and the issuance of any Conversion Shares upon conversion thereof) and compliance with the terms and provisions thereof will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter, by-laws or similar organizational document of the Company or any of its subsidiaries, (ii) any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) any agreement or instrument to which the Company or any of its

subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, in the case of clauses (ii) and (iii) above, for such defaults or violations as would not have a Material Adverse Effect; a "**Debt Repayment Triggering Event**" means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(s) *Absence of Existing Defaults and Conflicts*. The Company is not in violation of its charter or by-laws, or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties is subject, except such defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

(t) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(u) *Possession of Licenses and Permits*. The Company and its subsidiaries possess, and are in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits ("**Licenses**") necessary or material to the conduct of the business now conducted or proposed in the General Disclosure Package to be conducted by them and have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(v) *Absence of Labor Dispute*. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could reasonably be expected to have a Material Adverse Effect.

(w) *Intellectual Property*. The Company and its subsidiaries own, possess, have sufficient rights to use or can acquire on commercially reasonable terms, all trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other intellectual property rights (collectively, "**Intellectual Property Rights**") necessary or material to the conduct of the business as now conducted by them, and the expected expiration of any such Intellectual Property Rights would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The conduct of the business of the Company and its subsidiaries has not conflicted with, infringed, misappropriated or otherwise violated, and the conduct of the business of the Company and its subsidiaries as proposed in the General Disclosure Package to be conducted by them is not reasonably expected to conflict with, infringe, misappropriate or otherwise violate, any Intellectual Property Rights of any third party except for such infringements, misappropriations or other violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The Company and its subsidiaries have not received any notice of infringement of, or conflict with, asserted rights of others with respect to any Intellectual Property Rights that, if determined adversely to the Company or its subsidiaries, would reasonably be expected to have a Material Adverse Effect. Except in each case as disclosed in the General Disclosure Package or as would not, if determined adversely to the Company or any of its subsidiaries, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect (i) there are no rights of third parties to any of the Intellectual Property Rights owned or purported to be owned by the Company or any of its subsidiaries; (ii) there is no infringement, misappropriation, breach, default or other violation, or the occurrence of any event that with notice or the passage of time would constitute any of the foregoing, by any third party of any of the Intellectual Property Rights of the Company or any of its subsidiaries; (iii) to the knowledge of the Company, all Intellectual Property Rights owned by the Company or any of its subsidiaries are valid and enforceable; (iv) none of the Intellectual

Property Rights used by the Company or any of its subsidiaries in their respective businesses has been obtained or is being used by the Company or any of its subsidiaries in violation of any contractual obligation binding on the Company or any of its subsidiaries or in violation of the rights of any persons; and (v) the Company and its subsidiaries have taken commercially reasonable steps in accordance with normal industry practice to maintain the confidentiality of all Intellectual Property Rights the value of which to the Company or any of its subsidiaries is contingent on maintaining the confidentiality thereof.

(x) *Environmental Laws*. Except as disclosed in the General Disclosure Package, none of the Company or its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "**environmental laws**"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and to the knowledge of the Company, there are no pending investigations which could reasonably be expected to lead to such a claim.

(y) *Accurate Disclosure*. The statements in the General Disclosure Package and the Final Prospectus under the headings "Description of Common Stock," "Material U.S. Federal Income Tax Considerations," "Description of Notes," "Description of Convertible Note Hedge and Warrant Transactions," "Description of Debt Securities," insofar as such statements summarize the legal matters or agreements referred to therein, are accurate summaries of such legal matters or agreements in all material respects.

(z) *Absence of Manipulation.* None of the Company and its affiliates has, either alone or with one or more other persons, bid for or purchased for any account in which it or any of its affiliates had a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities.

(aa) *Statistical and Market-Related Data*. Any third-party statistical and market-related data included in the General Disclosure Package, a Final Prospectus, or any Issuer Free Writing Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects.

(bb) *Internal Controls and Compliance with the Sarbanes-Oxley Act*. Except as set forth in the General Disclosure Package, the Company and its Board of Directors (the "**Board**") are in compliance in all material respects with Sarbanes-Oxley and all applicable Exchange Rules. The Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an internal audit function, and legal and regulatory compliance controls (collectively, "**Internal Controls**"), that comply with the Securities Laws and are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles ("**GAAP**") and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls are overseen by the Audit Committee (the "**Audit Committee**") of the Board in accordance with Exchange Rules. Since the date of the Company's latest audited financial statements included in the General Disclosure Package, the Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 90 days the Company does not reasonably expect to publicly disclose or report to its Audit Committee or its Board, a significant deficiency, material weakness, change in Internal Controls or

fraud involving management or other employees who have a significant role in Internal Controls (each, an "**Internal Control Event**"), any violation of, or failure to comply with, the Securities Laws, or any matter which, in each case, if determined adversely, would have a Material Adverse Effect.

(cc) *Litigation*. Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company or any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate be expected to have a Material Adverse Effect, or would be expected to materially and adversely affect the ability of the Company to perform their obligations under the Indenture or this Agreement, or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge the issuance of the Conversion Shares upon the conversion of the Offered Securities to be sold hereunder; and to the knowledge of the Company, no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are currently threatened or contemplated.

(dd) *Financial Statements*. The financial statements of the Company and its consolidated subsidiaries included in the General Disclosure Package present fairly in all material respects the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and except as otherwise disclosed in the General Disclosure Package and the Final Prospectus, such financial statements have been prepared in conformity with GAAP applied on a consistent basis; and the assumptions used in preparing the pro forma financial statements included in the General Disclosure Package provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts, in each case, in all material respects. The financial statements of Kay Technology Holdings, Inc. included in the General Disclosure Package present fairly in all material respects the financial position of Kay Technology Holdings, Inc. and its consolidated subsidiaries as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with GAAP. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the General Disclosure Package fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(ee) *Independent Accountants*. Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(ff) *No Material Adverse Change in Business*. Except as disclosed or contemplated by in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries, taken as a whole, that is material and adverse; (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(gg) *Investment Company Act*. The Company is not an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940 (the "**Investment Company Act**"); and after giving effect to the transactions contemplated by the Call Spread Confirmations and the offering and sale of the Offered Securities and the application of the proceeds of the offering as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act.

(hh) *Ratings*. No "nationally recognized statistical rating organization" as such term is defined in Section 3(a)(62) of the Exchange Act has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(b)(ii) hereof.

(ii) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries, nor any director, officer, agent, employee, nor, to the knowledge of the Company, agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has: (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**") or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed or requested any bribe, rebate, payoff, influence payment, kickback or other unlawful payment. The Company and its subsidiaries have conducted their businesses on behalf of the Company and its subsidiaries, respectively, in compliance with the FCPA and instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the FCPA and all other applicable anti-bribery and anti-corruption laws.

(jj) *Compliance with Money Laundering Laws.* The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(kk) *No Conflicts with Sanctions.* Neither the Company, nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf and at the direction of the Company or of its subsidiaries is currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority ("Sanctions"), nor is the Company nor any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Sudan and Syria (each, a "Sanctioned Country"); and the Company will not directly or indirectly use the proceeds of the Concurrent Transactions, or (i) lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person at the time of such lending, contributing or making, subject or target of any Sanctions or (ii) in any other manner that will result in a violation by any person (including

any person participating in the Concurrent Transactions, where as an Underwriter, advisor, investor or otherwise) of Sanctions. For the past 5 years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(ll) *Taxes*. The Company and its subsidiaries have filed all federal, state, local and non-U.S. tax returns that are required to be filed or have requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect); and, except as set forth in the General Disclosure Package, the Company and its subsidiaries have paid all taxes (including any assessments, fines or penalties) required to be paid by them, except for any such taxes, assessments, fines or penalties currently being contested in good faith and for which adequate reserves have been provided in accordance with GAAP, or as would not have a Material Adverse Effect.

3. *Purchase, Sale and Delivery of Offered Securities.* (a) On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company agrees to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of 97.875% of the principal amount thereof plus accrued interest from June 18, 2014 to the Closing Date (as hereinafter defined), the respective principal amounts of Securities set forth opposite the names of the several Underwriters in Schedule A hereto.

The Company will deliver, against payment of the purchase price, the Offered Securities to be purchased by each Underwriter hereunder and to be offered and sold by each Underwriter in the form of one or more permanent global securities in definitive form without interest coupons (the "**Global Securities**") deposited with the Trustee as custodian for DTC and registered in the name of Cede & Co., as nominee for DTC. Interests in any Global Securities will be held only in book-entry form through DTC, except in the limited circumstances described in the Final Prospectus.

Payment for the Offered Securities representing all of the Firm Securities and Optional Securities (if the option provided for in Section 3(b) hereof shall have been exercised on or before the first business day immediately preceding the Closing Date) shall be made by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representative drawn to the order of the Company at the office of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 at 10:00 A.M., (New York time), on June 18, 2014 or at such other time not later than seven full business days thereafter as the Representative and the Company determine, such time being herein referred to as the "**Closing Date**", against delivery to the Trustee as custodian for DTC of the Global Securities representing all of the Firm Securities and Optional Securities (as applicable) (if the option provided for in Section 3(b) hereof shall have been exercised on or before the first business day immediately preceding the Closing Date). The applicable Global Securities will be made available for checking at the above office of Davis Polk & Wardwell LLP at least 24 hours prior to the Closing Date. For purposes of Rule 15c6-1 under the Securities Exchange Act of 1934, the Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. Delivery of the Firm Securities will be made through the facilities of the Depository Trust Company ("DTC") unless the Representative instructs otherwise.

(b) In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to $50,000,000 aggregate principal amount of Optional Securities from the Company at the same price as the purchase price to be paid by the Underwriters for the Firm Securities. The option granted hereunder may be exercised at any time and from time to time upon notice by the Representative to the Company, which notice may be given at any time within 30 days from the date of this Agreement. Such notice shall set forth (i) the amount (which shall be an integral multiple of $1,000 in aggregate principal amount) of Optional Securities as to which the Underwriters are exercising the option, (ii) the names and denominations in which the Optional Securities are to be registered and (iii) the time, date and place at which such Securities will be delivered (which time

and date may be simultaneous with, but not earlier than, the Closing Date; and in such case the term "Closing Date" herein shall refer to the time and date of delivery of the Firm Securities and the Optional Securities). Such time and date of delivery, if subsequent to the Closing Date, is called a "**Subsequent Closing Date**" and shall be determined by the Representative. Such date may be the same as the Closing Date but not earlier than the Closing Date nor later than 10 business days after the date of such notice. If any Optional Securities are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the principal amount of Optional Securities (subject to such adjustments to eliminate fractional amount as the Representative may determine) that bears the same proportion to the total principal amount of Optional Securities to be purchased as the principal amount of Firm Securities set forth on Schedule A opposite the name of such Underwriter bears to the total principal amount of Firm Securities. If the option provided for in this Section 3(b) hereof is exercised after the first business day immediately preceding the Closing Date, the Company will deliver the Optional Securities (at the expense of the Company) to the Representative on the date specified by the Representative (which shall be within three business days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representative of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company. If settlement for the Optional Securities occurs after the Closing Date, the Company will deliver to the Representative on the settlement date for the Optional Securities, and the obligation of the Underwriters to purchase the Optional Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 7 hereof. Delivery of the Optional Securities will be made through the facilities of the DTC unless the Representative instructs otherwise.

4. *Offering by Underwriters.* (a) It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

(b) In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), each of the Underwriters severally represents and agrees that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "**Relevant Implementation Date**") it has not made and will not make an offer of Offered Securities to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Offered Securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Offered Securities to the public in that Relevant Member State at any time:

(i) to legal entities which are qualified investors as defined in the Prospectus Directive;

(ii) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Underwriters for any such offer; or

(iii) in any other circumstances falling within Article 3 of the Prospectus Directive which do not require the publication by the Company of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Offered Securities to the public" in relation to any Offered Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Offered Securities to be offered so as to enable an investor to decide to purchase or subscribe the Offered Securities, as the same may be varied in that Member State by any measure

implementing the Prospectus Directive in that Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State; and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

(c) Each of the Underwriters severally represents and agrees that:

(i) (A) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (B) it has not offered or sold and will not offer or sell the Offered Securities other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Offered Securities would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "**FSMA**") by the Company;

(ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Offered Securities in circumstances in which Section 21(1) of the FSMA does not apply to the Company; and

(iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Offered Securities in, from or otherwise involving the United Kingdom.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Filing of Prospectuses.* The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by the Representative, subparagraph (5)) not later than the second business day following the earlier of the date it is first used or the execution and delivery of this Agreement. The Company has complied and will comply with Rule 433.

(b) *Filing of Amendments; Response to Commission Requests*. The Company will promptly advise the Representative of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus at any time and will offer the Representative a reasonable opportunity to comment on any such amendment or supplement; and the Company will also advise the Representative promptly of (i) the filing of any such amendment or supplement, (ii) any request by the Commission or its staff for any amendment to the Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iii) the institution by the Commission of any stop order proceedings in respect of the Registration Statement or the threatening of any proceeding for that purpose, and (iv) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws*. If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any

time to amend the Registration Statement or supplement the Final Prospectus to comply with the Securities Act, the Company will promptly notify the Representative of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representative, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representative's consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Rule 158.* As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Securities Act and Rule 158.

(e) *Furnishing of Prospectuses*. The Company will furnish to the Representative copies of the Registration Statement, including all exhibits, any Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exception in Rule 172 would be) required to be delivered under the Securities Act, the Final Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Representative reasonably requests. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications*. The Company will arrange for the qualification of the Offered Securities and the Conversion Shares for sale and the determination of their eligibility for investment under the laws of such jurisdictions in the United States and Canada as the Representative designates and will continue such qualifications in effect so long as required for the resale of the Offered Securities by the Underwriters, provided that the Company will not be required to qualify as a foreign corporation or to file a general consent to service of process in any such state.

(g) *Reporting Requirements*. During the period of three years hereafter, the Company will furnish, upon request, to the Representative and to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to shareholders for such year; and the Company will furnish upon request, to the Representative and to each of the other Underwriters (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to shareholders, and (ii) from time to time, such other information concerning the Company as the Representative may reasonably request *provided*, that, if the Representative shall request nonpublic confidential information, the Company shall only be required to provide the Representative with such information if the Representative shall enter into a customary confidentiality agreement with the Company with respect thereto. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**"), it is not required to furnish such reports or statements to the Representative or the other Underwriters.

(h) *Payment of Expenses*. The Company will pay all expenses incidental to the performance of its obligations under this Agreement and the Indenture, including but not limited to (i) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities, the preparation and printing of this Agreement, the Offered Securities, the Preliminary Prospectus, any other documents comprising any part of the General Disclosure Package, the Final Prospectus, all amendments and supplements thereto, each Issuer Free Writing Prospectus and any other document relating to the issuance, offer, sale and delivery of the Offered Securities; (ii) the cost of any advertising approved by the Company in connection with the issue of the Offered Securities; (iii) any expenses (including reasonable fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the

Offered Securities for sale under the laws of such jurisdictions in the United States and Canada as the Representative designates and the preparation and printing of memoranda relating thereto, any fees charged by investment rating agencies for the rating of the Securities, (iv) expenses incurred in distributing the Preliminary Prospectus, any other documents comprising any part of the General Disclosure Package, the Final Prospectus (including any amendments and supplements thereto) and any Issuer Free Writing Prospectus to the Underwriters, (v) expenses incurred from listing of the maximum number of shares of Common Stock issuable upon conversion of the Offered Securities (assuming physical settlement of all conversions and including any shares of Common Stock issuable in connection with a "make-whole adjustment event", as such term is defined in the Indenture) and the maximum number of shares of Common Stock issuable upon exercise and settlement or termination of the warrants issued pursuant to the Base Warrant Confirmations and any Additional Warrant Confirmations on the NASDAQ Global Select Market, (vi) any fees related to a filing required by the rules of FINRA, (vii) all expenses and application fees incurred in connection with any filing with and clearance of the Offering by FINRA, in an amount not to exceed $25,000, (viii) any fees of legal counsel incurred in connection with Goldman, Sachs & Co.'s acting as the QIU for the Offering, and (ix) the Company's costs and expenses relating to investor presentations on any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company including the cost of chartering of airplanes (if applicable) and the use of any private aircraft for purposes of the roadshow.

(i) *Use of Proceeds*. The Company will use the net proceeds received in connection with this offering in the manner described in the "Use of Proceeds" section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(j) *Absence of Manipulation*. The Company will not take, directly or indirectly, any action designed to or that would constitute or that could reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(k) *Company Lockup*. During the period beginning on the date hereof and continuing to the date that is 90 days after the date of this Agreement, without the prior written consent of the Representative, the Company will not directly or indirectly, sell, offer, contract to sell or otherwise dispose of, except as provided hereunder, any securities of the Company (or guaranteed by the Company) that are substantially similar to the Offered Securities, or any Offered Securities, or grant any option to sell, pledge, transfer or establish an open "put equivalent position" or liquidate or decrease a "call equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of), or announce the offering of, or file any registration statement under the Securities Act in respect of, any shares of Common Stock, options or warrants to acquire shares of the Common Stock or securities exchangeable or exercisable for or convertible into the Offered Securities or shares of Common Stock; *provided*, however, that the Company may issue shares of its Common Stock or options to purchase its Common Stock, or Common Stock upon exercise of options, pursuant to any stock option, stock bonus or other stock plan or arrangement described in the General Disclosure Package and Final Prospectus, *provided*, further, that the foregoing shall not apply to (i) the sale of the Offered Securities under this Agreement, the issuance of any shares of Common Stock upon conversion of the Offered Securities or the sale of Common Stock under the Underwriting Agreement dated the date of this Agreement between the Company and Goldman, Sachs & Co. (acting as a representative of several underwriters named in Schedule A thereto) relating to the sale of the Shares and (ii) the entry into, or the issuance by the Company of any shares of Common Stock upon exercise and settlement or termination of, the warrant transactions evidenced by the Warrant Confirmations.

(l) *Listing*. The Company will use its commercially reasonable best efforts to effect and maintain the listing of (x) the maximum number of shares of Common Stock issuable upon conversion of the Offered Securities (assuming physical settlement of all conversions and including any shares of Common Stock issuable in connection with a "make-whole adjustment event", as such term is defined in the Indenture) and (y) the maximum number of shares of Common Stock issuable upon exercise and settlement or termination of the warrants issued pursuant to the Base Warrant Confirmations and any Additional Warrant Confirmations.

(m) *Reservation of Conversion Shares*. The Company will reserve and keep available at all times, free of preemptive rights, the maximum number of shares of Common Stock issuable upon conversion of the Offered Securities (assuming physical settlement of all conversions and including any shares of Common Stock issuable in connection with a "make-whole adjustment event", as such term is defined in the Indenture) and the maximum number of shares of Common Stock issuable upon exercise and settlement or termination of the warrants issued pursuant to the Base Warrant Confirmations and any Additional Warrant Confirmations, in each case, on the NASDAQ Global Select Market.

(n) *Conversion Rate Adjustments*. Between the date hereof and the latest of the Closing Date and any Subsequent Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment to the conversion rate of the Offered Securities.

6. *Free Writing Prospectuses*. (a) *Issuer Free Writing Prospectuses*. The Company represents and agrees that, unless it obtains the prior consent of the Representative, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representative, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representative is hereinafter referred to as a "**Permitted Free Writing Prospectus**." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(b) *Term Sheets*. The Company will prepare a final term sheet relating to the Offered Securities, containing only information that describes the final terms of the Offered Securities and otherwise in a form consented to by the Representative, and will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for all classes of the offering of the Offered Securities. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement. The Company also consents to the use by any Underwriter of a free writing prospectus that contains only (i)(x) information describing the preliminary terms of the Offered Securities or their offering or (y) information that describes the final terms of the Offered Securities or their offering and that is included in the final term sheet of the Company contemplated in the first sentence of this subsection or (ii) other information that is not "issuer information," as defined in Rule 433, it being understood that any such free writing prospectus referred to in clause (i) or (ii) above shall not be an Issuer Free Writing Prospectus for purposes of this Agreement.

7. *Conditions of the Obligations of the Underwriters*. The obligations of the several Underwriters to purchase and pay for the Firm Securities and the Optional Securities, as the case may be, will be subject to the accuracy of the representations and warranties of the Company herein (as though made on the Closing Date), to the accuracy of the statements of officers of the Company made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent (references to the Closing Date in this Section 7 shall apply to the Subsequent Closing Date, if applicable):

(a) *Accountants' Comfort Letters*. The Representative shall have received letters, dated, respectively, the date hereof on the General Disclosure Package and the Closing Date on the Final Prospectus, of (i) Deloitte & Touche LLP confirming that they are a registered public accounting firm and independent public accountants with respect to the Company within the meaning of the Securities Laws and in form and substance reasonably satisfactory to the Representative (except that, in any letter dated on the Closing Date, the "cut-off" date shall be a date no more than three days prior to such Closing Date) and (ii) BDO USA, LLP confirming that they are independent accountants with respect to the Kay Technology Holdings, Inc. in form and substance reasonably satisfactory to the Representative (except that, in any letter dated on the Closing Date, the "cut-off" date shall be a date no more than three days prior to such Closing Date).

(b) *Filing of Prospectus.* The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. No stop order suspending the effectiveness of the Registration Statement or of any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or any Underwriter, shall be contemplated by the Commission.

(c) *No Material Adverse Change*. Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries taken as a whole which, in the judgment of the Representative, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities or preferred stock of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Section 3(a)(62) of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representative, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market, (iv) any suspension or material limitation of trading in securities generally on the NASDAQ Global Select Market, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on the NASDAQ Global Select Market or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representative, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it in the judgment of the Representative impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion of Counsel for Company and General Counsel for Company*. The Representative shall have received (i) an opinion, dated the Closing Date, of Jones Day, counsel for the Company, substantially in the form attached as Exhibit G-1 hereto, and (ii) an opinion, dated the Closing Date, of Peter Fante, Chief Legal Officer of the Company, substantially in the form attached as Exhibit G-2 hereto.

(e) *Opinion of Counsel for Underwriters*. The Representative shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to such matters as the Representative may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(f) *Officers' Certificate*. The Representative shall have received certificates, dated the Closing Date, of an executive officer or president of the Company and a principal financial or accounting officer of the Company in which such officers shall state that the representations and warranties of the Company in this Agreement are true and correct as of such date, that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; that no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after inquiry, are contemplated by the Commission; and that, subsequent to the dates of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the financial condition, results of operations, business or properties of the Company and its subsidiaries taken as a whole except as set forth in the General Disclosure Package or as described in such certificate.

(g) *Lockup Letters*. On or prior to the date hereof, the Representative shall have received lockup letters in the form of Exhibit E from each of the executive officers and directors of the Company listed on Schedule F.

(h) *Listing*. An application for the listing of the maximum number of shares of Common Stock for issuance upon conversion of the Offered Securities (assuming physical settlement of all conversions and including any shares of Common Stock issuable in connection with a "make-whole adjustment event", as such term is defined in the Indenture) and the maximum number of shares of Common Stock issuable upon exercise and settlement or termination of the Base Warrant Confirmations and any Additional Warrant Confirmations, as the case may be, shall have been approved by the NASDAQ Global Select Market, subject, in each case, to official notice of issuance.

Documents described as being "in the agreed form" are documents which are in the forms which have been initialed for the purpose of identification by Davis Polk & Wardwell LLP, copies of which are held by the Company and the Representative, with such changes as the Representative may approve.

The Company will furnish the Representative with such conformed copies of such opinions, certificates, letters and documents as the Underwriters reasonably request. The Representative may in its sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of a Subsequent Closing Date or otherwise.

8. *Indemnification and Contribution*. (a) *Indemnification of Underwriters*. The Company will indemnify and hold harmless each Underwriter, its officers, employees, agents, partners, members, directors and its affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "**Indemnified Party**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary in order to make the statements therein, not misleading and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating, preparing or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto) whether threatened or commenced and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information consists of the information described as such in subsection (b) below.

(b) *Indemnification of Company*. Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and officers, each of the Company's affiliates and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "**Underwriter Indemnified Party**"), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating, preparing or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto) whether threatened or commenced based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Preliminary and Final Prospectus furnished on behalf of each Underwriter under the caption "Underwriting (Conflicts of Interest)" in the third, twelfth, thirteenth, fourteenth and fifteenth paragraphs; provided, however, that the Underwriters shall not be liable for any losses, claims, damages or liabilities arising out of or based upon the Company's failure to perform its obligations under Section 5(a) of this Agreement.

(c) *Actions against Parties; Notification*. Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation unless (i) the indemnifying person and the indemnified person shall have mutually agreed to the contrary; (ii) the indemnifying person has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified person; (iii) the indemnified person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the indemnifying person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the indemnifying person and the indemnified person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) *Contribution*. If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total discounts and commissions received by the Underwriters from the Company under this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(d). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

9. *Indemnification of QIU*. (a) The Company will indemnify and hold harmless Goldman, Sachs & Co., in its capacity as QIU, against any and all losses, claims, damages or liabilities, joint or several, to which the QIU may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any part of Preliminary Prospectus, the Registration Statement at any time, any Statutory Prospectus, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (ii) any act or omission to act or any alleged act or omission to act by Goldman, Sachs & Co. as QIU in connection with any transaction contemplated by this Agreement or undertaken in preparing for the purchase, sale and delivery of the Offered Securities, and will reimburse the QIU for any legal or other expenses reasonably incurred by the QIU in connection with investigating or defending any such action or claim as such expenses are incurred, except as to this clause (ii) to the extent that any such loss, claim, damage, liability, or expense results from the gross negligence or bad faith of Goldman, Sachs & Co. in performing the services as QIU.

(b) Promptly after receipt by the QIU under subsection (a) above of notice of the commencement of any action, the QIU shall, if a claim in respect thereof is to be made against the Company under such subsection, notify the Company of the commencement thereof; but the failure to notify the Company shall not relieve it from any liability which it may have to the QIU under such

subsection except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the Company shall not relieve it from any liability that it may have to the QIU otherwise than under such subsection. In case any such action shall be brought against the QIU and it shall notify the Company of the commencement thereof, the Company shall be entitled to participate therein and, to the extent that it shall wish to assume the defense thereof, with counsel reasonably satisfactory to the QIU (who shall not, except with the consent of the QIU, be counsel to the Company), and, after notice from the Company to the QIU of its election so to assume the defense thereof, the Company will not be liable to the QIU under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by the QIU, in connection with the defense thereof other than reasonable costs of investigation unless (i) the Company and the QIU shall have mutually agreed to the contrary; (ii) the Company has failed within a reasonable time to retain counsel reasonably satisfactory to the QIU; (iii) the QIU shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Company; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Company and the QIU and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. The Company shall not, without the prior written consent of the QIU, effect any settlement of any pending or threatened action in respect of which indemnification or contribution could have been sought hereunder (whether or not the QIU is an actual or potential party to such action or claim) unless such settlement (i) includes an unconditional release of the QIU from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or failure to act, by or on behalf of QIU.

(c) If the indemnification provided for in this Section 9 is unavailable or insufficient to hold harmless Goldman, Sachs & Co., in its capacity as QIU, under subsection (a) above, then the Company shall contribute to the amount paid or payable by the QIU as a result of the losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the QIU on the other from the offering of the Offered Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then the Company shall contribute to such amount paid or payable by the QIU in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the QIU on the other in connection with the statements or omissions or actions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the QIU on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company, bear to the fee payable to the QIU pursuant to this Agreement in its capacity as a QIU. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the QIU on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the QIU agree that it would not be just and equitable if contributions pursuant to this subsection (c) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (c). The amount paid or payable by the QIU as a result of the losses, claims, damages or liabilities referred to above in this subsection (c) shall be deemed to include any legal or other expenses reasonably incurred by the QIU in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The obligations of the Company under this Section 9 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the QIU within the meaning of the Act.

10. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the Closing Date or any Subsequent Closing Date and the aggregate principal amount of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total principal amount of Offered Securities that the

Underwriter or Underwriters are obligated to purchase on such Closing Date, the Representative may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by the Closing Date or Subsequent Closing Date, as applicable, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase. If any Underwriter or Underwriters so default and the aggregate principal amount of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total principal amount of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to the Representative and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 11 (provided that if such default occurs with respect to Optional Securities after the Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

11. *Survival of Certain Representations and Obligations.* The respective indemnities, rights of contribution, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company, or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If this Agreement is terminated pursuant to Section 9 or if for any reason the purchase of the Offered Securities by the Underwriters is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Company and the Underwriters pursuant to Section 8 shall remain in effect. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 10, the Company will reimburse the Underwriters for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, except as otherwise agreed by the Company and any of the Underwriters in writing.

12. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters will be mailed, delivered or telegraphed and confirmed to the Underwriters, c/o Deutsche Bank Securities Inc., 60 Wall Street, New York, New York 10005, Attention: Equity Capital Markets – Syndicate Desk, fax: (212) 797-9344, with a copy to Deutsche Bank Securities Inc., 60 Wall Street, 36th Floor, New York, New York 10005, Attention: General Counsel, fax: (212) 797-4564; or, if sent to the Company, will be mailed, delivered or e-mailed and confirmed to it at Verint Systems Inc., 330 South Service Road, Melville, New York 11747, Attention: Alan Roden, Corporate Treasurer, alan.roden@verint.com; provided, however, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

13. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, employees, agents, partners, members, directors, affiliates and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

14. *Representation of Underwriters.* The Representative will act for the several Underwriters in connection with this offering, and, except as otherwise specified in another section of this Agreement, any action under this Agreement taken by the Representative will be binding upon all the Underwriters.

15. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

16. *Absence of Fiduciary Relationship*. The Company acknowledges and agrees that:

(a) *No Other Relationship*. The Representative has been retained solely to act as an underwriter in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company and the Representative has been created in respect of any of the transactions contemplated by this Agreement or the Preliminary Prospectus or Final Prospectus, irrespective of whether the Representative has advised or is advising the Company on other matters;

(b) *Arms'-Length Negotiations*. The price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms'-length negotiations with the Representative and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose*. The Company has been advised that the Representative and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representative has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver*. The Company waives, to the fullest extent permitted by law, any claims it may have against the Representative for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representative shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

**17. *Applicable Law.* This Agreement and any claim, controversy or dispute arising under or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

If the foregoing is in accordance with the Representative's understanding of our agreement, kindly sign and return to us one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

Verint Systems Inc.

By: /s/ Peter Fante
Name: Peter Fante
Title: Chief Legal Officer

The foregoing Underwriting Agreement
is hereby confirmed and accepted
as of the date first above written.

DEUTSCHE BANK SECURITIES INC.

By: /s/ Andrew Yaeger
Name: Andrew Yaeger
Title: Managing Director

By: /s/ Faiz Khan
Name: Faiz Khan
Title: Director

Acting on behalf of itself
and as the Representative of
the several Underwriters

**SCHEDULE A**

| Underwriter | Principal Amount of Firm Securities |
|---|---|
| Deutsche Bank Securities Inc. | $ 133,529,000 |
| Credit Suisse Securities (USA) LLC | 47,059,000 |
| Goldman, Sachs & Co | 47,059,000 |
| RBC Capital Markets, LLC | 47,059,000 |
| Barclays Capital Inc. | 37,647,000 |
| HSBC Securities (USA) Inc | 37,647,000 |
| Total | $ 350,000,000 |

**SCHEDULE B**

**1. General Use Free Writing Prospectuses (included in the General Disclosure Package)**

"General Use Issuer Free Writing Prospectus" includes each of the following documents:

1. Free writing prospectus dated June 9, 2014 (launch press release)

2. Free writing prospectus, dated June 12, 2014 (final term sheet), a copy of which is attached hereto as Exhibit C

3. Free writing prospectus, dated June 12, 2014 (pricing press release)

**2. Other Information Included in the General Disclosure Package**

The following information is also included in the General Disclosure Package:

None

**EXHIBIT C**

**Pricing Term Sheet**

**Free Writing Prospectus**
**Filed Pursuant to Rule 433**
**Registration Statement No. 333-196612**
**Supplementing the**
**Preliminary Prospectus Supplements dated June 9, 2014**
**(to Prospectus dated June 9, 2014)**

**PRICING TERM SHEET**
**Dated as of June 12, 2014**

**Verint Systems Inc.**

**5,000,000 Common Shares**
**and**
**$350,000,000 1.50% Convertible Senior Notes due 2021**

*The information in this pricing term sheet relates to offerings by Verint Systems Inc. of 5,000,000 shares of its common stock (the "Shares") and its 1.50% Convertible Senior Notes due 2021(the "Notes") and should be read together with the applicable preliminary prospectus supplement dated June 9, 2014 (including the documents incorporated by reference therein and the base prospectus dated June 9, 2014 in respect thereof) relating to such offerings. The information in this pricing term sheet supersedes the information in the preliminary prospectus supplements to the extent that it is inconsistent therewith. Terms used but not defined herein have the meanings ascribed to them in the applicable preliminary prospectus supplement.*

*The offering of the Shares and the offering of the Notes are separate offerings that are being made pursuant to separate prospectus supplements. The closing of the offering of the Shares is not conditioned upon the closing of the offering of the Notes, and the closing of the offering of the Notes is not conditioned upon the closing of the offering of the Shares.*

**5,000,000 Common Shares**

| | |
|---|---|
| **Issuer:** | Verint Systems Inc. |
| **NASDAQ Symbol:** | VRNT |
| **Shares Offered:** | 5,000,000 shares of common stock (excluding option to purchase 750,000 additional shares) |
| **Price to Public:** | $47.75 per share |
| **Net Proceeds:** | Approximately $230.69 million (or approximately $265.29 million if the underwriters exercise their option to purchase additional shares in full) after deducting underwriting discounts and commissions, but without giving effect to the cost of the convertible note hedge transactions, the proceeds from the warrant transactions or other offering expenses. |
| **Closing Date:** | June 18, 2014 |
| **Use of Proceeds:** | The Issuer intends to use the net proceeds from the sale of the Shares, together with proceeds from the Notes offering, to repay a portion of the outstanding indebtedness under the Issuer's existing credit facilities and to pay the net cost of the convertible note hedge transactions related to the offering of Notes. |

| | |
|---|---|
| **Joint Book-Running Managers:** | Goldman, Sachs & Co.<br>Deutsche Bank Securities Inc.<br>Credit Suisse Securities (USA) LLC<br>J.P. Morgan Securities LLC<br>RBC Capital Markets, LLC<br>Barclays Capital Inc.<br>Jefferies LLC |
| **Co-Managers:** | FBR Capital Markets & Co.<br>Oppenheimer & Co. Inc.<br>Imperial Capital, LLC |

**$350,000,000 1.50% Convertible Senior Notes due 2021**

| | |
|---|---|
| **Issuer:** | Verint Systems Inc. |
| **NASDAQ Symbol:** | VRNT |
| **Securities Offered:** | 1.50% Convertible Senior Notes due 2021 |
| **Offering Size:** | $350,000,000 aggregate principal amount (or $400,000,000 aggregate principal amount if the underwriters exercise their option to purchase additional Notes in full) |
| **Public Offering Price:** | 100% of the principal amount, plus accrued interest, if any, from the Settlement Date |
| **Underwriting Discount:** | 2.125% of the principal amount |
| **Net Proceeds:** | Approximately $342.56 million (or $391.50 million if the underwriters exercise their option to purchase additional Notes in full) after deducting underwriting discounts and commissions, but without giving effect to the cost of the convertible note hedge transactions, the proceeds from the warrant transactions or other offering expenses. |
| **Use of Proceeds:** | The Issuer also intends to use approximately $13.7 million of the net proceeds from the Notes offering to pay the cost of the convertible note hedge transactions described below (after such cost is partially offset by the proceeds to the Issuer from the sale of the warrant transactions described below). The Issuer intends to use the remainder of the net proceeds from the Notes offering, together with the proceeds from the offering of Shares, to repay a portion of the outstanding indebtedness under its existing credit facilities. If the underwriters exercise their option to purchase additional Notes, the Issuer may sell additional warrants and use a portion of the proceeds from the sale of the additional Notes, together with the proceeds from the sale of the additional warrants, to enter into additional convertible note hedge transactions. See “Use of Proceeds” in the preliminary prospectus supplement for the Notes. |
| **Maturity:** | June 1, 2021, unless earlier purchased, redeemed or converted |
| **Interest Rate:** | 1.50% per annum payable semiannually in arrears in cash |
| **Interest Payment Dates:** | June 1 and December 1, beginning December 1, 2014 |
| **No Redemption:** | The Issuer may not redeem the Notes prior to the maturity date. No sinking fund is provided for the Notes. |

**Convertible Note Hedge and Warrant Transactions:** In connection with the pricing of the Notes, the Issuer is entering into convertible note hedge transactions with one or more financial institutions, including certain of the underwriters or their affiliates (the "Option Counterparties"). The Issuer is also entering into warrant transactions with the Option Counterparties. The convertible note hedge transactions are expected to reduce potential dilution to the Issuer's common stock and/or offset potential cash payments in excess of the principal amount of converted Notes upon any conversion of Notes. However, the warrant transactions could separately have a dilutive effect to the extent that the market value per share of the Issuer's common stock exceeds the applicable strike price of the warrants. If the underwriters exercise their option to purchase additional Notes, the Issuer may enter into additional convertible note hedge transactions and additional warrant transactions.

**NASDAQ Last Reported Sale Price on June 12, 2014:** $48.28 per share of the common stock

**Initial Conversion Rate:** 15.5129 shares of common stock per $1,000 principal amount of Notes

**Initial Conversion Price:** Approximately $64.46 per share of common stock

**Conversion Premium:** Approximately 35% above the Price to Public of the Shares

**Make-Whole Premium Upon Conversion Upon a Make-Whole Adjustment Event:** If certain corporate events as described in the preliminary prospectus supplement for the Notes occur at any time prior to the maturity date, each of which is referred to as a "make-whole adjustment event," the conversion rate for any Notes converted following such make-whole adjustment event will, in certain circumstances and for a limited period of time, be increased by a number of additional shares of common stock. The number of additional shares will be determined by reference to the following table and is based on the effective date of such make-whole adjustment event and the applicable "stock price" (as defined in the preliminary prospectus supplement for the Notes) per share of common stock for the make-whole adjustment event:

| | Stock Price | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Effective Date** | **$ 47.75** | **$ 54.00** | **$ 60.00** | **$ 64.46** | **$ 70.00** | **$ 75.00** | **$ 85.00** | **$105.00** | **$130.00** | **$165.00** | **$205.00** | **$250.00** |
| June 18, 2014 | 5.4295 | 4.2375 | 3.3793 | 2.8822 | 2.3881 | 2.0311 | 1.4972 | 0.8613 | 0.4616 | 0.2023 | 0.0748 | 0.0159 |
| June 1, 2015 | 5.4295 | 4.3054 | 3.3975 | 2.8749 | 2.3590 | 1.9888 | 1.4413 | 0.8032 | 0.4154 | 0.1735 | 0.0595 | 0.0096 |
| June 1, 2016 | 5.4295 | 4.3431 | 3.3809 | 2.8314 | 2.2933 | 1.9111 | 1.3535 | 0.7225 | 0.3560 | 0.1392 | 0.0429 | 0.0038 |
| June 1, 2017 | 5.4295 | 4.3432 | 3.3211 | 2.7432 | 2.1834 | 1.7908 | 1.2291 | 0.6188 | 0.2863 | 0.1034 | 0.0277 | 0.0004 |
| June 1, 2018 | 5.4295 | 4.2633 | 3.1747 | 2.5677 | 1.9890 | 1.5910 | 1.0383 | 0.4752 | 0.1988 | 0.0633 | 0.0126 | 0.0000 |
| June 1, 2019 | 5.4295 | 4.0035 | 2.8499 | 2.2213 | 1.6385 | 1.2515 | 0.7431 | 0.2849 | 0.1011 | 0.0273 | 0.0021 | 0.0000 |
| June 1, 2020 | 5.4295 | 3.5567 | 2.2995 | 1.6447 | 1.0744 | 0.7266 | 0.3310 | 0.0772 | 0.0216 | 0.0055 | 0.0000 | 0.0000 |
| June 1, 2021 | 5.4295 | 3.0056 | 1.1538 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 |

The exact stock prices and effective dates may not be set forth in the table above, in which case if the stock price is:

- between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year;
- in excess of $250.00 per share (subject to adjustment), no additional shares will be added to the conversion rate; and
- less than $47.75 per share (subject to adjustment), no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, the Issuer may not increase the conversion rate to more than 20.9424 shares per $1,000 principal amount of Notes, though the Issuer will adjust such number of shares for the same events for which the Issuer must adjust the conversion rate as described under "Description of Notes—Conversion of Notes—Conversion Rate Adjustments" in the preliminary prospectus supplement for the Notes.

| | |
|---|---|
| **Trade Date:** | June 13, 2014 |
| **Settlement Date:** | June 18, 2014 |
| **CUSIP/ISIN:** | 92343X AA8 / US92343XAA81 |
| **Joint Book-Running Managers:** | Deutsche Bank Securities Inc.<br>Goldman, Sachs & Co.<br>Credit Suisse Securities (USA) LLC<br>RBC Capital Markets, LLC<br>Barclays Capital Inc.<br>HSBC Securities (USA) Inc. |

**Pro Forma Ratio of Earnings to Fixed Charges**

Because the proceeds of the Notes offering will be used to repay indebtedness and the Issuer's ratio of earnings to fixed charges would change by ten percent or more, the Issuer's pro forma ratios of earnings to fixed charges and earnings to fixed charges and preference security dividends for the periods indicated are presented below. The disclosure in the Preliminary Prospectus Supplement is supplemented by the following:

| | Three Months Ended April 30, 2014 | Fiscal Year Ended January 31, 2014 |
|---|---|---|
| Pro forma ratio of earnings to fixed charges (1) | (A) | 3.5x |
| Pro forma ratio of earnings to fixed charges and preference security dividends (1) | (A) | 3.5x |

(1) The pro forma ratios of earnings to fixed charges and earnings to fixed charges and preference security dividends reflect the assumed issuance of the Notes offered hereby on the first day of the applicable period and the use of proceeds therefrom to repay a portion of the outstanding indebtedness under the Issuer's existing credit facilities, as described in "Use of Proceeds." The pro forma ratios also reflect amortization of deferred financing costs and cash interest payments that the Issuer would have paid on the Notes. Accordingly, these pro forma ratios do not reflect the additional interest expense the Issuer would have incurred for accounting purposes as a result of separating the Notes into liability and equity components and amortizing the deemed debt discount into interest expense over the term of the notes in accordance with ASC 470-20.

(A) Pro forma earnings were insufficient to cover pro forma fixed charges for this period. The amount of the coverage deficiency was $11.2 million. The Issuer had no outstanding preferred stock during the three months ended April 30, 2014, so the pro forma fixed charges and preference security dividends coverage deficiency for that period is identical to the coverage deficiency for pro forma fixed charges.

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**The Issuer has filed a registration statement, including a prospectus, and preliminary prospectus supplements with the Securities and Exchange Commission, or SEC, for the offerings to which this communication relates. Before you invest, you should read the prospectus and preliminary prospectus supplements in that registration statement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and these offerings. You may obtain these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the prospectus, the preliminary prospectus supplements, and the final prospectus supplements when available, may be obtained by contacting, in respect of the Shares offering, Goldman, Sachs & Co., Prospectus Department, 200 West Street, New York, NY 10282, by calling 866-471-2526, or by emailing prospectus-ny@ny.email.gs.com, or, in respect of the Notes offering, by contacting Deutsche Bank Securities Inc., Attn: Prospectus Group, 60 Wall Street, New York, New York 10005-2836, by calling toll-free (800) 503-4611, or by emailing prospectus.CPDG@db.com.**

**SCHEDULE D**

**Changes in the Company's subsidiaries since January 31, 2014**

**New Subsidiaries of the Company**

| Name | Jurisdiction of Incorporation or Organization |
|---|---|
| Broadbase Software, Inc. | Delaware |
| Ciboodle Customer Interaction Solutions South Africa (PTY) Ltd. | South Africa |
| Ciboodle Inc. | Delaware |
| Ciboodle Ireland Ltd. | Ireland |
| Ciboodle (Land and Estates) Ltd. | United Kingdom |
| Ciboodle Ltd. | United Kingdom |
| Ciboodle PTY Ltd. | Australia |
| Edgar Acquisition Company Limited | United Kingdom |
| Graham Technology BV | Netherlands |
| Graham Technology Ltd | United Kingdom |
| KANA Benelux BV | Netherlands |
| KANA Software BV | Netherlands |
| KANA Software Canada, Ltd | Canada |
| KANA Software, Inc. | Delaware |
| KANA Software Ireland Limited | Ireland |
| KANA Software Ireland No. 2 Limited | Ireland |
| KANA Software KK | Japan |
| KANA Software Limited | United Kingdom |
| KANA Solutions Limited | United Kingdom |
| KAY Technology Holdings, Inc. | Delaware |
| Lagan Technologies (Canada) Inc. | Canada |
| Lagan Technologies, Inc. | Delaware |
| Lagan Technologies Limited | United Kingdom |
| Overtone, Inc. | Delaware |
| Permadeal Limited | Cyprus |
| PT Ciboodle Indonesia | Indonesia |
| Sword Soft, Inc. | Delaware |
| Teletrain Verint B.V. | Netherlands |
| Triniventures BV | Netherlands |
| Trinicom Belgie NV | Belgium |
| Trinicom Duetschland Gmbh | Germany |
| Trinicom UK Ltd | United Kingdom |
| UTX Technologies Limited | Cyprus |
| Verint Acquisition LLC | Delaware |
| Verint Systems Holdings B.V. | Netherlands |
| Verint Systems Taiwan Ltd. | Taiwan, ROC |

**Entities that have ceased to be the Company's subsidiaries**

| Name | Jurisdiction of Incorporation or Organization |
|---|---|
| Global Management Technologies Europe Limited | United Kingdom |
| Iontas Inc. | Delaware |
| Rontal USA Inc. | Delaware |
| Verint Blue Pumpkin Software LLC | Delaware |

**EXHIBIT E**

**Form of Lockup Letter**

June , 2014

Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005

as the Representative as the term is defined in the Underwriting Agreement relating to the Offering

Re: Verint Systems Inc. (the "Company")

Ladies and Gentlemen:

The undersigned is an owner of record or beneficially of certain shares of common stock of the Company, $0.001 par value ("Common Stock") or securities convertible into or exchangeable or exercisable for Common Stock. The Company proposes to carry out an offering of Convertible Notes, which will be convertible into Common Stock (the "Offering"), for which you will act as the representative of the underwriters (in such capacity, the "Representative"). The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company. The undersigned acknowledges that you and the other underwriters are relying on the representations and agreements of the undersigned contained in this letter in carrying out the Offering and in entering into purchase arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not, (and will cause any spouse or immediate family member of the spouse or the undersigned living in the undersigned's household not to), without the prior written consent of Deutsche Bank Securities Inc. (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including without limitation any short sale), pledge, transfer, establish an open "put equivalent position" or liquidate or decrease a "call equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise dispose of or transfer (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of) including the filing (or participation in the filing of) of a registration statement with the Securities and Exchange Commission in respect of, any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock (collectively, the "Lock-Up Securities") currently or hereafter owned either of record or beneficially (as defined in Rule 13d-3 under the Exchange Act) by the undersigned (or such spouse or family member), or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 60 days after the date of the final prospectus supplement for the Offering (the "Lock-Up Period"), except (A) any transfer of Lock-Up Securities pursuant to a sale of 100% of the outstanding shares of Common Stock (including, without limitation, a tender offer or by way of merger of the Company with another person) to a third party or group of third parties that are not affiliates of the Company, *provided* that the opportunity to participate in such sale, tender offer, merger or other such transaction is offered to all holders of shares of Common Stock or, with respect to any statutory merger of consolidation in which the Company is a constituent company, the participation of holders of shares of Common Stock is not voluntary (or is otherwise pursuant to an exercise of dissenters' rights applicable to any such statutory merger or consolidation); (B) any sale or transfer of Lock-Up Securities up to, in the aggregate, the lesser of (i) 10,000 shares of Common Stock or (ii) 10% of the shares of Common Stock beneficially owned by the undersigned as of the date hereof (as determined in accordance with Rule 13d-3 of the Exchange Act); (C) any transfer of Lock-Up Securities as a bona fide gift, (D) any transfer of Lock-Up Securities to a trust for the benefit of the undersigned and/or any "immediate family member" (as defined in Rule 16a-1 under the Exchange Act) of the undersigned,

(E) the exercise of any option to purchase Lock-Up Securities that was granted under and in accordance with any Company employee benefit plan, qualified stock option plan or other director or employee compensation plan, or any agreement existing pursuant to such a plan, including the transfer to the Company of Lock-Up Securities underlying such options solely to pay the exercise price or any withholding taxes in connection with the exercise thereof on a "cashless" or net settlement basis (it being understood that such purchased Lock-Up Securities, after giving effect to the "cashless" or net settlement exercise of options, shall remain subject to this agreement), (F) any transfer to the Company of Lock-Up Securities underlying restricted stock and restricted stock unit grants solely to pay any withholding taxes in connection with the scheduled vesting thereof on a "cashless" or net settlement basis and (G) the sale of any Lock-Up Securities acquired by the undersigned in the open market; *provided* that, in the case of any transfer pursuant to clause (C) or (D), (x) the transferee agrees in writing to be bound by the terms of this agreement, (y) such transfer does not require any filing by the undersigned under the Exchange Act and (z) no voluntary filing relating to such transfer may be made by the undersigned other than a filing on a Form 5 made after the expiration of the Lock-Up Period. The foregoing shall not apply to transfers or sales of Common Stock pursuant to any contract, instruction or plan, including a contract, instruction or plan complying with Rule 10b5-1 of the Exchange Act, that has been entered into by the undersigned prior to the date of this agreement.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock held by the undersigned except in compliance with the foregoing restrictions.

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives, and assigns of the undersigned.

Very truly yours,

_____

Name:
Title:

**SCHEDULE F**

**The Officers and Directors of the Company subject to a Lockup Agreement**

| Name | Position |
|---|---|
| Dan Bodner | President, Chief Executive Officer, Corporate Officer, and Director |
| Victor DeMarines | Chairman of the Board |
| John Egan | Director |
| Larry Myers | Director |
| Richard Nottenburg | Director |
| Howard Safir | Director |
| Earl Shanks | Director |
| Douglas Robinson | Chief Financial Officer and Corporate Officer |
| Elan Moriah | President, Enterprise Intelligence Solutions and Video and Situation Intelligence Solutions and Corporate Officer |
| Meir Sperling | Chief Strategy Officer and Corporate Officer |
| Peter Fante | Chief Legal Officer, Chief Compliance Officer, and Corporate Officer |

**Exhibit 4.1**

VERINT SYSTEMS INC.,

INDENTURE

Dated as of June 18, 2014

WILMINGTON TRUST,
NATIONAL ASSOCIATION,

as Trustee

Debt Securities

**CROSS-REFERENCE TABLE***

| *Trust Indenture Act Section* | *Indenture Section* |
|---|---|
| 310(a)(1) | 7.10 |
| (a)(2) | 7.10 |
| (a)(3) | Not Applicable |
| (a)(4) | Not Applicable |
| (a)(5) | 7.10 |
| (b) | 7.10 |
| 311(a) | 7.11 |
| (b) | 7.11 |
| 312(a) | 2.06 |
| (b) | 11.02 |
| (c) | 11.02 |
| 313(a) | 7.06(a) |
| (b)(1) | Not Applicable |
| (b)(2) | 7.06(a); 7.07(f) |
| (c) | 7.06(a); 11.01 |
| (d) | 7.06(b) |
| 314(a) | 4.02; 4.03; 11.01; 11.04 |
| (b) | Not Applicable |
| (c)(1) | 11.03 |
| (c)(2) | 11.03 |
| (c)(3) | Not Applicable |
| (d) | Not Applicable |
| (e) | 11.04 |
| (f) | Not Applicable |
| 315(a) | 7.01(b) and (c) |
| (b) | 7.05; 11.01 |
| (c) | 7.01(a) |
| (d) | 7.01 |
| (e) | 6.11 |
| 316(a) | 6.05 |
| (a)(1)(A) | 6.05 |
| (a)(1)(B) | 6.04 |
| (a)(2) | Not Applicable |
| (b) | 6.07 |
| (c) | 2.13 |
| 317(a)(1) | 6.08 |
| (a)(2) | 6.09 |
| (b) | 2.05 |
| 318(a) | 1.03 |

* Note: This Cross-Reference Table is not part of the Indenture.

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(continued)

INDENTURE dated as of June 18, 2014 by and between Verint Systems Inc., a Delaware corporation (the "*Company*"), and Wilmington Trust, National Association, as trustee (the "*Trustee*").

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the "*Notes*"), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of its Board of Directors or by supplemental indentures or Officer's Certificates (as defined herein).

The Company and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein) of the Notes:

## ARTICLE 1
DEFINITIONS AND INCORPORATION
BY REFERENCE

Section 1.01 *Definitions*.

*"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 purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "*controlling*," "*controlled by*" and "*under common control with*" have correlative meanings.

*"Agent"* means any Registrar, co-registrar, Paying Agent or additional paying agent.

*"Bankruptcy Law"* means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors or other governing body of the general partner of the partnership;

(3) with respect to a limited liability company, the board of directors or other governing body, and in the absence of the same, the manager or board of managers or the managing member or members or any controlling committee thereof; and

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

"*Board Resolution*" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by its Board of Directors or pursuant to authorization by its Board of Directors and to be in full force and effect on the date of the certificate (and delivered to the Trustee, if appropriate).

*"Business Day"* means any day other than a Legal Holiday.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity that is not a corporation, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on the holder thereof the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Company*" has the meaning assigned to it in the preamble to this Indenture until a successor thereto is permitted hereunder, and thereafter means such successor. The foregoing sentence will likewise apply to any subsequent such successor or successors.

"*Corporate Trust Office of the Trustee*" means the office of the Trustee at which at any particular time its corporate trust business related to this Indenture shall be principally administered, which office at the date hereof is located at the address of the Trustee specified in Section 11.01 hereof, or such other address as to which the Trustee may give notice to the Company.

"*Custodian*" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"*Default*" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Depositary*" means, unless otherwise provided in a Board Resolution, a supplemental indenture or an Officer's Certificate with respect to the Notes of any Series issuable or issued in whole or in part in the form of one or more Global Notes, the Person specified in Section 2.04 hereof as the Depositary with respect to such Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Discount Note*" means any Note that provides for an amount less than the stated principal amount thereof to be due and payable upon acceleration of the maturity thereof pursuant to Section 6.02.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

*"GAAP"* means U.S. generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Issue Date.

"*Global Note*" or "*Global Notes*" means a Note or Notes, as the case may be, in the form established pursuant to Section 2.02 evidencing all or part of a Series of Notes, issued to the Depositary for such Series or its nominee, and registered in the Security Register in the name of such Depositary or nominee.

"*Government Securities*" means securities which are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, and which in the case of (i) and (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Securities or a specific payment of interest on or principal of any such Government Securities held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities evidenced by such depository receipt.

"*Holder*" means a Person in whose name a Note is registered in the Security Register.

"*Indebtedness*" of any Person as of any date means, without duplication, all indebtedness of such person in respect of borrowed money, including all interest, fees and expenses owed in respect thereto (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, debentures or similar instruments.

*"Indenture"* means this Indenture as amended or supplemented from time to time, and shall include the form and terms of particular Series of Notes established as contemplated hereunder.

"*Issue Date*" means the date on which Notes of a Series are originally issued under this Indenture.

"*Legal Holiday*" means, unless otherwise specified with respect to the Notes of a Series, a Saturday, a Sunday or a day on which banking institutions in The City of New York (or with respect to a payment, the place of payment) are authorized or required by law, regulation or executive order to close.

"*Maturity*," when used with respect to any Note or installment of principal thereof, means the date on which the principal of such Note or such installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by acceleration, call for redemption, notice of option to elect repayment or otherwise.

*"Notes"* has the meaning assigned to it in the preamble to this Indenture.

"*Officer*" means, with respect to the Company, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, the Controller or the Secretary of the Company.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by an Officer that meets the requirements of Section 11.03 hereof and delivered to the Trustee.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee that meets the requirements of Section 11.03 hereof. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Predecessor Notes*," when used with respect to any particular Note, means every previous Note evidencing all or a portion of the same Indebtedness as that evidenced by such Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.03 of the Indenture in exchange for or in lieu of a mutilated, destroyed, lost, or stolen Note will be deemed to evidence the same debt as the mutilated, destroyed, lost, or stolen Note.

"*Regular Record Date*" means the date fixed for the payment of interest on the Notes (whether or not a Business Day) immediately preceding the applicable interest payment date.

"*Responsible Officer*," when used with respect to the Trustee, means any vice-president, any assistant vice president, any trust officer or any other officer of the Trustee (or any successor group of the Trustee) customarily performing functions similar to those performed by any of the above designated officers who has responsibility with respect to this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject or who has direct responsibility for the administration thereof.

*"SEC"* means the Securities and Exchange Commission.

*"Securities Act"* means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"*Security Register*" means a register for the purpose of registering Notes and the transfers of Notes, which shall be kept at the Corporate Trust Office of the Trustee.

"*Series*" or "*Series of Notes*" means each series of bonds, notes, debentures or similar instruments of the Company created pursuant to Sections 2.01 and 2.02 hereof.

"*Significant Subsidiary*" means any direct or indirect Subsidiary of the Company that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Issue Date.

"*Special Record Date*" for the payment of any defaulted interest on Notes of or within any Series means a date fixed by the Trustee pursuant to Section 2.13.

"*Stated Maturity*" means, with respect to any installment of interest on or principal of any Series of Notes, the date on which the payment of interest or principal was originally scheduled to be paid in the documentation governing such Notes, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means any corporation, partnership, limited liability company or other entity of which a majority of all outstanding Capital Stock having ordinary voting power (i.e., without regard to the occurrence of any contingency) in the election of directors to the Board of Directors of such corporation, partnership, limited liability company or other entity is at the time, directly or indirectly, owned or controlled by the Company or by one or more other subsidiaries or by the Company and one or more other subsidiaries.

"*TIA*" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb), and the rules and regulations promulgated thereunder, as in effect on the Issue Date, except as provided in Sections 1.03 and 9.03.

"*Trustee*" has the meaning assigned to it in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter means the successor serving hereunder, and if at any time there is more than one such person, "Trustee", as used with respect to the Notes of any Series, shall mean the trustee with respect to Notes of that Series.

Section 1.02 *Other Definitions*.

| Term | Defined in Section |
|---|---|
| *"Authentication Order"* | 2.03 |
| *"Covenant Defeasance"* | 8.03 |
| *"DTC"* | 2.04 |
| *"Event of Default"* | 6.01 |
| *"Legal Defeasance"* | 8.02 |
| *"Paying Agent"* | 2.04 |
| *"Payment Default"* | 6.01 |
| *"Proceeding"* | 6.09 |
| *"Registrar"* | 2.04 |

Section 1.03 *Trust Indenture Act*.

The provisions of TIA Sections 310 through 317 that impose duties on any Person (including the provisions automatically deemed included herein unless expressly excluded by this Indenture) are a part of and govern this Indenture upon and so long as the Indenture and Notes are subject to the TIA. If any provision of this Indenture limits, qualifies or conflicts with such duties, the imposed duties shall control. If a provision of the TIA requires or permits a provision of this Indenture and the TIA provision is amended, then the Indenture provision shall be automatically amended to like effect.

Section 1.04 *Rules of Construction*.

Unless the context otherwise requires:

(1) a term defined in the TIA and used herein without definition has the meaning assigned to it in the TIA;

(2) a term defined herein has the meaning assigned to it herein;

(3) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(4) "or" is not exclusive;

(5) words in the singular include the plural, and in the plural include the singular;

(6) "will" shall be interpreted to express a command;

(7) provisions apply to successive events and transactions; and

(8) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time.

**ARTICLE 2**
THE NOTES

Section 2.01 *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited. The Notes may be issued in one or more Series. All Notes of a Series shall be identical other than issue date and, in some cases, issue price and first interest payment date, as the Notes of such Series. In the case of Notes of a Series to be issued from time to time, the Board Resolution, supplemental indenture or Officer's Certificate may provide for the method by which specified terms (such as interest rate, maturity date, record dates, interest payment dates and date from which interest shall accrue) are to be determined. Notes may differ between Series in respect of any matters.

Section 2.02 *Establishment of Terms of Series of Notes.*

At or prior to the issuance of any Notes within a Series, the following shall be established (as to the Series generally, in the case of Section 2.02(a), and either as to such Notes within the Series or as to the Series generally, in the case of Sections 2.02(b) through 2.02(t)) by a Board Resolution, a supplemental indenture or an Officer's Certificate:

(a) the title of the Series (which shall distinguish the Notes of that particular Series from the Notes of any other Series but which may be part of a Series of Notes previously issued);

(b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Notes of the Series will be issued;

(c) the denominations in which the Notes of the Series shall be issuable if other than denominations of $2,000 and any integral multiples of $1,000 in excess of $2,000;

(d) any limit upon the aggregate principal amount of the Notes of the Series which may be authenticated and delivered under this Indenture (except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes of the Series pursuant to Section 2.07, 2.08, 2.11, 3.06 or 9.05);

(e) whether the Notes of the Series will be issuable as Global Notes, the terms and conditions, if any, upon which such Global Notes may be exchanged in whole or in part for Notes of such Series in certificated form registered in the names of the individual holders thereof, the Depositary for such Global Notes and the form of any legend or legends to be borne by any such Global Notes in addition to or in lieu of the legend set forth in Section 2.14(c);

(f) the date or dates on which the principal of the Notes of the Series is payable;

(g) (i) the rate or rates, if any, at which the Notes of the Series shall bear interest (which may be fixed or variable), (ii) the manner in which the amounts of payment of principal (which, for all purposes of this Indenture, shall include amounts payable in excess thereof) of or interest, if any, on the Notes of the Series will be determined, if such amounts may be determined by reference to any commodity or commodity, currency, stock exchange or financial index, (iii) the date or dates from which interest, if any, shall accrue, (iv) the date or dates on which interest, if any, on the Notes of the Series shall commence and be payable and (v) any regular or special record date for the payment of interest, if any, on the Notes of the Series;

(h) (i) if other than in U.S. dollars, the currency in which Notes of a Series are denominated, which may include any foreign currency or any composite of two or more currencies, and (ii) the currency or currencies in which payments on such Notes are payable, if other than the currency in which such Notes are denominated;

(i) the place or places where the principal of, premium, if any, and interest, if any, on the Notes of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means;

(j) any Depositaries, interest rate calculation agents or other agents with respect to Notes of such Series if other than those appointed herein;

(k) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Notes of the Series may be redeemed, purchased or repaid, in whole or in part, at the option of the Company;

(l) the obligation, if any, of the Company to redeem, purchase or repay the Notes of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof upon the happening of any event and the period or periods within which, the price or prices at which and the terms and conditions upon which Notes of the Series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(m) if other than the principal amount thereof, the portion of the principal amount of the Notes of the Series that shall be payable upon acceleration of the maturity thereof pursuant to Section 6.02;

(n) any addition to or change in the covenants (and related defined terms) set forth in Article 4 or 5 which applies to Notes of the Series;

(o) any addition to or change in the Events of Default which applies to any Notes of the Series and any change in the right of the Trustee or the requisite Holders of such Notes to declare the principal amount thereof due and payable pursuant to Section 6.02;

(p) the provisions relating to any security provided for the Notes of the Series;

(q) the subordination, if any, of the Notes of the Series pursuant to this Indenture;

(r) the form and terms of any guarantee of the Notes of the Series and the subordination, if any, of such guarantees pursuant to this Indenture;

(s) if and as applicable, the terms and conditions of any right to exchange for or convert Notes of the Series into shares of common stock or other securities of the Company or another Person; and

(t) any other terms of the Notes of the Series.

All Notes of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officer's Certificate referred to above. Unless otherwise provided by such Board Resolution, a supplemental indenture or an Officer's Certificate with respect to the Notes of any Series, the Company may from time to time, without notice to or the consent of the Holders of the Notes

of such Series, create and issue additional Notes of such Series ranking equally with all other Notes of such Series in all respects. Such additional Notes may be consolidated and form a single Series with the Notes of such Series and have the same terms, other than issue date and, in some cases, issue price and first interest payment date, as the Notes of such Series.

The Notes of each Series shall be in such form as shall be established by or pursuant to a Board Resolution, supplemental indenture or Officer's Certificate, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistent herewith, be determined by the Officer executing such Notes, as evidenced by their execution of the Notes. If the form of Notes of any Series is established by action taken pursuant to a Board Resolution or Officer's Certificate, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Authentication Order contemplated by Section 2.03 for the authentication and delivery of such Notes.

The Notes shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the Officer executing such Notes, as evidenced by their execution of such Notes.

Section 2.03 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee or other authorized authenticating agent. The signature will be conclusive evidence that the Note has been duly authenticated under this Indenture.

The Trustee shall at any time, and from time to time, authenticate Notes for original issue in the principal amount provided in the Board Resolution, supplemental indenture or Officer's Certificate, upon receipt by the Trustee of a written order of the Company signed by an Officer (an "*Authentication Order*"). Each Note shall be dated the date of its authentication unless otherwise provided by a Board Resolution, a supplemental indenture or an Officer's Certificate.

The aggregate principal amount of Notes of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture or Officer's Certificate delivered pursuant to Section 2.02, except as provided in Section 2.08.

Prior to the issuance of Notes of any Series, the Trustee shall have received and (subject to Section 7.01) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture or Officer's Certificate establishing the form of the Notes of that Series or of Notes within that Series and the terms of the Notes of that Series or of Notes within that Series and (b) an Officer's Certificate and an Opinion of Counsel complying with Section 11.03, which, in the case of the Opinion of Counsel, shall also substantially state, unless the Trustee is otherwise permitted to rely on an opinion delivered at closing to such effect, that such Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium, reorganization, and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general principles of equity.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Section 2.04 *Registrar and Paying Agent; Depositary*.

The Company will maintain, with respect to each Series of Notes, at the place or places specified with respect to such Series pursuant to Section 2.02 an office or agency where Notes of such Series may be presented for registration and registration of transfer or for exchange ("*Registrar*") and an office or agency where such Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a Security Register. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to or the consent of any Holder. The Company will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of the Company's Subsidiaries may act as Paying Agent or Registrar.

The Company hereby initially appoints The Depository Trust Company, New York, New York ("*DTC*") to act as Depositary with respect to the Global Notes for each Series.

The Company hereby initially appoints the Trustee to act as the Registrar and Paying Agent and to act as custodian with respect to the Global Notes for each Series unless another Registrar, Paying Agent or custodian of Global Notes for the Depositary, as the case may be, is appointed prior to the time Notes of that Series are first issued.

Section 2.05 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders of any Series or the Trustee all money held by the Paying Agent for the payment of principal of or premium, if any, or interest on the Notes of such Series, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary of the Company) will have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders of the particular Series all money held by it as Paying Agent. Upon any bankruptcy, reorganization or similar proceedings relating to the Company, the Trustee will serve as Paying Agent for the Notes.

Section 2.06 *Holder Lists*.

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders of each Series of Notes and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company will furnish to the Trustee at

least seven Business Days before each interest payment date, if any, and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of each Series of Notes and the Company shall otherwise comply with TIA § 312(a).

Section 2.07 *Transfer and Exchange*.

Where Notes of a Series are presented to the Registrar or a co-registrar with a request to register a transfer in the Security Register or to exchange them for an equal principal amount of Notes of the same Series, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trustee shall authenticate Notes of the same Series at the Registrar's request. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.11, 3.06 or 9.05).

Neither the Company nor the Registrar shall be required (a) to issue, register in the Security Register the transfer of, or exchange Notes of any Series for the period beginning at the opening of business 15 days immediately preceding the sending of a notice of redemption of Notes of that Series selected for redemption and ending at the close of business on the day of such sending, (b) to register in the Security Register the transfer of or exchange Notes of any Series selected, called or being called for redemption as a whole or the portion being redeemed of any such Notes selected, called or being called for redemption in part, or (c) to issue, register the transfer of or exchange any Note of any Series which, in accordance with its terms, has been surrendered for repayment at the option of the Holder and not withdrawn, except the portion, if any, of such Note not to be so repaid.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note of any Series (including any transfers between or among depositary participants or beneficial owners of interests in any Global Notes) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

Section 2.08 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Company or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note of the same Series if the Trustee's requirements are met. The Trustee and the Company shall require that security or indemnity must be supplied by the Holder that is sufficient in the reasonable judgment of the Trustee to protect the Trustee and the reasonable judgment of the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes of the same Series duly issued hereunder.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.08, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.09 *Outstanding Notes*.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof and those described in this Section 2.09 as not outstanding. Except as set forth in Section 2.10 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.08 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

Any Note with respect to which the Company has effected Legal Defeasance or Covenant Defeasance pursuant to Article 8, except to the extent provided in Article 8, will cease to be outstanding.

Any Note of any Series that has been converted or exchanged into common stock or other securities or property of the Company or another Person, if the terms of such Note provides for such conversion or exchange, will cease to be outstanding and interest on it will cease to accrue.

If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of any thereof) holds, on a redemption date, repurchase date or maturity date of Notes of a Series, money sufficient to pay such Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest unless otherwise provided by a Board Resolution, a supplemental indenture or an Officer's Certificate with respect to such Series.

In determining whether the Holders of the requisite principal amount of outstanding Notes have any request, demand, authorization, notice, direction, waiver or consent hereunder, the principal amount of a Discount Note that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 6.02.

Section 2.10 *Treasury Notes*.

In determining whether the Holders of the required principal amount of Notes of a Series have given any request, demand, authorization, notice, direction, waiver or consent hereunder, Notes of a Series owned by the Company or by any of its Affiliates will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in conclusively relying on any such request, demand, authorization, notice, direction, waiver or consent, only Notes of a Series that a Responsible Officer of the Trustee knows are so owned will be so disregarded.

Section 2.11 *Temporary Notes*.

Until definitive Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company will prepare and the Trustee will authenticate definitive Notes of the same Series in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.12 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will promptly cancel all Notes, in accordance with its customary practices, surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of canceled Notes (subject to the record retention requirement of the Exchange Act and the Trustee). Certification of the cancellation of all canceled Notes will be delivered to the Company upon written request. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.13 *Defaulted Interest*.

If the Company defaults in a payment of interest on a Series of Notes and such Notes provide for the payment of default interest, the Company will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders of such Notes on a subsequent Special Record Date, in each case at the rate (which may be fixed or variable) provided in such Notes. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each such Note and the date of the proposed payment. The Company will fix or cause to be fixed each such Special Record Date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the Special Record Date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) will send or cause to be sent to Holders of the Series a notice that states the Special Record Date, the related payment date and the amount of such interest to be paid. Subject to the foregoing, the Company may make payment of any defaulted interest in any lawful manner deemed practicable by the Trustee and not inconsistent with the requirements of any securities exchange on which the Notes of such Series may be listed.

Section 2.14 *Global Notes*.

(a) Terms of Notes. A Board Resolution, a supplemental indenture or an Officer's Certificate shall establish whether the Notes of a Series shall be issued in whole or in part in the form of one or more Global Notes and the Depositary for such Global Note or Notes.

(b) Transfer and Exchange. Notwithstanding any provisions to the contrary contained in Section 2.07 of the Indenture and in addition thereto, any Global Note shall be exchangeable pursuant to Section 2.07 of the Indenture for Notes registered in the names of Holders other than the Depositary for such Note or its nominee only if (i) the Company delivers to the Trustee a notice from the Depositary that

(A) the Depositary is no longer willing or able to continue as depositary for any Global Note, or (B) the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act, and, in either case, the Company is unable to locate a qualified successor within 90 days, (ii) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of Notes in certificated form under the Indenture, or (iii) there has occurred and is continuing a Default or Event of Default with respect to such Notes and the Company or the Depositary has elected to cause such exchange. Any Global Note that is exchangeable pursuant to the preceding sentence shall, upon surrender by the Depositary of such Global Note, be exchangeable for Notes of the same Series with like tenor and terms registered in such names as the Depositary shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Note of the same Series. Except as provided in this Section 2.14(b), a Global Note may not be transferred except as a whole by the Depositary with respect to such Global Note to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

(c) Legend. Any Global Note issued hereunder shall bear a legend in substantially the following form:

> "This Note is a Global Note within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depositary or a nominee of the Depositary. This Note is exchangeable for Notes registered in the name of a person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary."

(d) Acts of Holders. The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.02, payment of the principal of, premium if any, and interest, if any, on any Global Note shall be made to the Holder thereof.

(f) Consents, Declaration and Directions. Except as provided in Section 2.14(d), the Company, the Trustee and any Agent shall treat a person as the Holder of such principal amount of outstanding Notes of such Series represented by a Global Note as shall be specified in a written statement of the Depositary with respect to such Global Note, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture.

Section 2.15 *CUSIP Numbers*.

The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other elements of identification printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

**ARTICLE 3**
REDEMPTION

Section 3.01 *Notices to Trustee*.

The Company may, with respect to any Series of Notes, reserve the right to redeem the Series of Notes or may covenant to redeem the Series of Notes or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Notes. If a Series of Notes is redeemable and the Company elects to exercise its right to redeem or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Notes pursuant to the terms of such Notes, it shall notify the Trustee of the redemption date and the principal amount of Series of Notes to be redeemed. Subject to Section 3.03, the Company shall deliver the notice to the Trustee at least 10 days before the redemption date (or such shorter notice as may be acceptable to the Trustee).

Section 3.02 *Selection of Notes to Be Redeemed*.

Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, if less than all of the Notes of a Series are to be redeemed at any time, the Trustee (subject to the applicable procedures of the Depositary) will select such Notes for redemption:

(1) if such Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which such Notes are listed (so long as the Trustee has received notice of such listing);

(2) if such Notes are not listed on any national securities exchange, in any manner that the Trustee deems fair and appropriate, which may include selection pro rata or by lot.

The Trustee shall make the selection from Notes of the Series then outstanding.

In the event of partial redemption, the particular Notes to be redeemed will be selected, unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, not less than 10 days prior to the redemption date by the Trustee from the then outstanding Notes.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected will be in amounts of $2,000 and integral multiples of $1,000 in excess of $2,000 or, with respect to Notes of any Series issuable in other denominations pursuant to Section 2.02(c), the minimum principal denomination for each Series and integral multiples thereof; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if less than $2,000 and/or not a multiple of $1,000, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 3.03 *Notice of Redemption*.

(a) Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, at least 10 days but not more than 60 days before a redemption date, the Company will send or cause to be sent, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be sent more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes of a Series or a satisfaction and discharge of this Indenture with respect to Notes of a Series pursuant to Articles 8 or 10 hereof.

The notice will identify the Notes of the particular Series to be redeemed and will state:

(1) the CUSIP(s) and/or ISIN(s) of such Notes;

(2) the clause of the Board Resolution, supplemental indenture or Officer's Certificate pursuant to which the redemption shall occur;

(3) the redemption date;

(4) the redemption price or the method of calculating such redemption price, including any accrued and unpaid interest;

(5) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(6) the name and address of the Paying Agent;

(7) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(8) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption will cease to accrue on and after the redemption date;

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes being redeemed; and

(10) any other information as may be required by the terms of the particular Series of Notes being redeemed.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at the Company's expense; *provided, however*, that the Company has delivered to the Trustee, at least 5 days prior to the date the notice of redemption must be sent (or such shorter notice as may be acceptable to the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 *Effect of Notice of Redemption*.

Once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, a notice of redemption may not be conditional. Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price.

Section 3.05 *Deposit of Redemption Price*.

On or before 10:00 a.m., Eastern Time, on the redemption date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of all Notes to be redeemed on that date. The Trustee or the Paying Agent will promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of all Notes to be redeemed.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption date interest will cease to accrue on the Notes or the portions of Notes of the Series called for redemption. If a Note of a Series is redeemed on a redemption date that falls on or after an interest payment date, then interest payable on such interest payment date shall be paid to the Person in whose name such Note was registered at the close of business on the record date for such interest payment date. If any Note of a Series called for redemption is not so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid amount (in the case of interest, to the extent lawful), from the redemption date until such amount is paid, in each case at the rate (which may be fixed or variable) provided in such Notes.

Section 3.06 *Notes Redeemed in Part*.

Upon surrender of a Note that is redeemed in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note of the same Series equal in principal amount to the unredeemed portion of the Note surrendered.

## ARTICLE 4
## COVENANTS

Section 4.01 *Payment of Notes*.

The Company covenants and agrees for the benefit of the Holders of each Series of Notes that the Company will pay or cause to be paid the principal of, and premium, if any, and interest, if any, on the Notes of that Series on the dates and in the manner provided in such Notes and this Indenture. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m., Eastern Time, on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. If a payment date is a Legal Holiday, payment may be made on the next succeeding Business Day, and no interest shall accrue on such payment for the intervening period.

Section 4.02 *Reports*.

Unless this Section 4.02 is otherwise indicated to be inapplicable to the Notes of a particular Series by a Board Resolution, a supplemental indenture or an Officer's Certificate, the Company shall deliver to the Trustee within 15 days after it files them with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company also shall comply with the other

provisions of TIA Section 314(a). For the avoidance of doubt, the Company will be deemed to have furnished such reports, information and documents referred to above to the Trustee if the Company, as applicable, has filed such reports with the SEC via its Electronic Data Gathering and Retrieval System filing system and such reports are publicly available. The Company will notify the Trustee of the filing by email or otherwise. Notwithstanding anything in this Indenture to the contrary, the Company will not be deemed to have failed to comply with any of its agreements under this Section 4.02 for purposes of Section 6.01(3) until 90 days after the date any report, information or document is required to be filed with the SEC pursuant to this covenant.

Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officer's Certificate). The Trustee shall have no responsibility or liability for the filing, timeliness or content of any report required under this Section 4.02 or any other reports, information and documents required under this Indenture (aside from any report that is expressly the responsibility of the Trustee subject to the terms hereof).

Section 4.03 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, a brief certificate of the principal executive officer, principal financial officer or principal accounting officer of the Company stating that, in the course of performing their duties as officers of the Company, a review of the activities of the Company and the Company's Subsidiaries during the preceding fiscal year has been made under the supervision of the signing officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or premium, if any, or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, promptly upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or propose to take with respect thereto; *provided*, *however*, that no notice need be delivered under this Section 4.03(b) if the Default or Event of Default has been cured prior to the time delivery of notice would have otherwise been required.

Section 4.04 *Taxes*.

The Company will pay, and will cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.05 *Stay, Extension and Usury Laws*.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.06 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership, limited liability company or other existence of each of its Significant Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Significant Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Company and its Significant Subsidiaries; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership, limited liability company or other existence of any of its Significant Subsidiaries, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes or such action is otherwise permitted by this Indenture.

## ARTICLE 5
## SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

Unless this Section 5.01 is otherwise indicated to be inapplicable to the Notes of a particular Series by a Board Resolution, a supplemental indenture or an Officer's Certificate, the Company will not: (i) consolidate or merge with or into another Person or (ii) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(1) either:

(A) the Company is the surviving entity; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Company under the Notes and this Indenture pursuant to a supplemental indenture or other agreements delivered to the Trustee;

(3) immediately after such transaction, no Default or Event of Default exists (other than in the case of (i) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or (ii) any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets, between or among the Company and its Subsidiaries); and

(4) the Company delivers, or causes to be delivered, to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, transfer, conveyance, lease or other disposition complies with the requirements of this Indenture.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, conveyance, lease or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, conveyance, lease or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; *provided, however*, that the predecessor Company shall not be relieved from the obligation to pay the principal of and premium, if any, and interest, if any, on the Notes in the case of such a sale, assignment, transfer, conveyance, lease or other disposition.

## **ARTICLE 6**
## DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

"*Event of Default*," wherever used herein with respect to Notes of any Series, means any one of the following events, unless otherwise specified in the establishing Board Resolution, supplemental indenture or Officer's Certificate related to such Series:

(1) default for 30 days in the payment when due of interest on the Notes of that Series;

(2) default in the payment when due (at Maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes of that Series;

(3) failure by the Company to comply with any non-payment covenant in this Indenture (other than a covenant that has been included in this Indenture solely for the benefit of a Series of Notes other than that Series) and such failure continues for the period and after the notice specified below;

(4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company, whether such Indebtedness now exists, or is created after the Issue Date, if that default

(A) is caused by a failure to pay principal of, or interest or premium, if any, on, such Indebtedness prior to the expiration of the grace period provided in such Indebtedness following the Stated Maturity of such obligation (a "Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its Stated Maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates such amount as may be set forth in a Board Resolution, a supplemental indenture or an Officer's Certificate for a particular Series of Notes;

(5) the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case or proceeding;

(B) consents to (i) the entry of an order for relief against it in an involuntary case or proceeding or (ii) the commencement of any bankruptcy or insolvency case or proceeding against it;

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due;

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case or proceeding;

(B) determines that the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary is insolvent at a date following the issuance of the Notes of such Series or adjudges any of the foregoing Persons as a debtor under Bankruptcy Law, or approves as properly filed a petition seeking reorganization, arrangement, adjustment or conformation of or in respect of any of the foregoing Persons;

(C) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary; or

(D) orders the winding up or liquidation of the Company or any of Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(7) any other Event of Default provided with respect to Notes of that Series, which is specified in a Board Resolution, a supplemental indenture or an Officer's Certificate, in accordance with Section 2.02(o).

A Default under clause (3) shall not be an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Notes of that Series then outstanding voting as a single class notify the Company and the Trustee in writing, of the Default and the Company does not cure the Default or it is not waived within 60 days after the receipt of the notice. The notice must specify the Default, demand that it be remedied to the extent consistent with law and state that the notice is a "Notice of Default."

Section 6.02 *Acceleration*.

In the case of an Event of Default with respect to Notes of any Series at the time outstanding specified in clause (5) or (6) of Section 6.01 hereof with respect to the Company, all outstanding Notes of such Series will become due and payable immediately without further action or notice. If any other Event of Default with respect to Notes of any Series at the time outstanding occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount (or, if any Notes of that Series are Discount Notes, such portion of the principal amount as may be specified in the terms of such Notes) of the then outstanding Notes of such Series may declare all such Notes to be due and payable immediately. Upon any such declaration, the Notes of such Series shall become due and payable immediately.

The Holders of a majority in aggregate principal amount of the then outstanding Notes of any Series by written notice to the Trustee may, on behalf of all of the Holders of the Notes of that Series, rescind any acceleration and its consequences (other than with respect to an Event of Default specified in clauses (5) or (6) of Section 6.01 relating to the Company), if (1) the rescission would not conflict with any judgment or decree, (2) the Company has paid or deposited with the Trustee a sum sufficient to pay in the currency in which the Notes of such Series are payable (A) all overdue interest, if any, on all outstanding Notes of that Series, (B) all unpaid principal of and premium, if any, on any outstanding Notes of the Series which has become due otherwise than by such a declaration of acceleration, and interest on such unpaid principal or premium at the rate or rates prescribed therefor in such Notes or, if no such rate or rates are so prescribed, at the rate borne by the Notes during the period of such Default, and (C) to the extent that payment of such interest is enforceable under applicable law, interest upon overdue interest to that date of such payment or deposit at the rate or rates prescribed therefor in such Notes, or if no such rate or rates are so prescribed, at the rate borne by the Notes during the period of such Default, and (3) all existing Events of Default with respect to such Notes (except nonpayment of principal, premium, if any, or interest that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

If an Event of Default with respect to the Notes of a Series occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of and premium, if any, and interest on such Notes or to enforce the performance of any provision of such Notes or this Indenture.

The Trustee may maintain a proceeding with respect to the Notes of a Series even if it does not possess any of such Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default with respect to the Notes of a Series shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default with respect to such Notes. All remedies are cumulative to the extent permitted by law.

Section 6.04 *Waiver of Past Defaults*.

The Holders of a majority in aggregate principal amount of the then outstanding Notes of a Series, by written notice to the Trustee, may, on behalf of the Holders of all of such Notes, waive an existing Default or Event of Default with respect to such Notes and its consequences hereunder, except a Default or Event of Default in the payment of the principal of or premium, if any, or interest on such Notes or in respect of a covenant or provision which cannot be modified or amended hereunder without the consent of the Holder of each such Note. Upon any such waiver, such Default with respect to such Notes shall cease to exist, and any Event of Default with respect to such Notes arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default with respect to such Notes or impair any right with respect to such Notes consequent thereon.

Section 6.05 *Control by Majority.*

Subject to Section 7.02(f), the Holders of a majority in aggregate principal amount of the then outstanding Notes of a Series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes of such Series or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

A Holder of Notes of a Series may pursue a remedy with respect to this Indenture or the Notes of such Series only if:

(1) such Holder has previously given the Trustee written notice that an Event of Default with respect to such Notes is continuing;

(2) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes of such Series make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer and, if requested, provide to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(5) during such 60-day period, the Holders of a majority in aggregate principal amount of the then outstanding Notes of such Series do not give the Trustee a direction inconsistent with such request.

A Holder of a Note of a particular Series may not use this Indenture to prejudice the rights of another Holder of a Note of that Series or to obtain a preference or priority over another Holder of a Note of that Series (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 6.07 *Rights of Holders of Notes to Receive Payment*.

Notwithstanding any other provision of this Indenture or the Notes, the right of any Holder of a Note to receive payment of principal of and premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, and to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs, has not been waived and is continuing with respect to Notes of a Series, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole unpaid amount of principal of and premium, if any, and interest on, such Notes and, if such Notes provide for the payment of default interest, interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any liquidation, bankruptcy, insolvency, reorganization, receivership or similar proceeding under Bankruptcy Law, an assignment for the benefit of creditors, any marshalling of assets or liabilities, or winding up or dissolution, not including any transaction permitted by and made in compliance with Article 5 (each of the foregoing, a "*Proceeding*") and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any Custodian in any Proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee hereunder out of the estate in any such Proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any Proceeding.

Section 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

*First*: to the Trustee and any Agent, their agents and attorneys for amounts due hereunder, including payment of all reasonable compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

*Second*: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

*Third*: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs*.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes of any Series.

## ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred, has not been waived and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith, willful misconduct or negligence on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own bad faith or willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will not be liable with respect to any action it takes or omits to take with respect to Notes of any Series in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *Rights of Trustee*.

(a) The Trustee may conclusively rely upon and shall be fully protecting in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture, *provided* that the Trustee's conduct does not constitute bad faith, willful misconduct or negligence.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer.

(f) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction. No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is known to a Responsible Officer of the Trustee.

(j) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may request, and in the absence of bad faith, willful misconduct or negligence on its part, rely upon an Officer's Certificate and an Opinion of Counsel.

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(m) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(n) Any permissive right or authority granted to the Trustee in this Indenture shall not be construed as a mandatory duty.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest, it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (if this Indenture has been qualified under the TIA) or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the sale of any Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing with respect to the Notes of a Series and if it is known to a Responsible Officer of the Trustee, the Trustee will send to Holders of such Notes a notice of the Default or Event of Default within 90 days after it occurs or becomes known to the Trustee. Except in the case of a Default or Event of Default in payment of principal of or premium, if any, or interest on any Note of a Series, the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the best interests of the Holders of such Notes.

Section 7.06 *Reports by Trustee to Holders of the Notes*.

(a) Within 60 days after each May 15 beginning with the May 15 following the Issue Date, and for so long as Notes of a Series remain outstanding, the Trustee will send to the Holders of such Notes a brief report, dated as of such reporting date, that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b)(2). The Trustee will transmit all reports as required by TIA § 313(c).

(b) A copy of each report at the time of its delivery to the Holders of Notes of a Series will be sent by the Trustee to the Company and filed by the Trustee with the SEC and each stock exchange, if any, on which such Notes are listed in accordance with TIA § 313(d) (provided the Trustee has received notice of such listing). The Company will promptly notify the Trustee in writing if and when Notes of any Series are listed on any stock exchange, or if such notes shall become delisted from such exchange.

Section 7.07 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time compensation for its acceptance of this Indenture and services hereunder as agreed between the parties in writing. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services, except any such disbursement, advance or expense that may arise from the Trustee's willful misconduct, negligence or bad faith. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee against any and all losses, liabilities or expenses actually incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the reasonable costs and expenses of enforcing this Indenture against the Company (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its bad faith, willful misconduct or negligence. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company under this Section 7.07 will survive the satisfaction and discharge of this Indenture.

(d) To secure the Company's payment obligations in this Section 7.07, the Trustee will have a lien prior to the Notes of a Series on all money or property held or collected by the Trustee, except that held in trust to pay the principal of and/or premium, if any, and/or interest on particular Notes of such Series. Such lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) or (6) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee will comply with the provisions of TIA § 313(b)(2) to the extent applicable.

Section 7.08 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign with respect to the Notes of one or more Series in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in aggregate principal amount of the then outstanding Notes of a Series may remove the Trustee with respect to such Series by so notifying the Trustee and the Company in writing not less than 30 days prior to the effective date of such removal. The Company may remove the Trustee with respect to the Notes of one or more Series if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a Custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes of a Series may appoint a successor Trustee to replace the successor Trustee appointed by the Company with respect to such Series.

(d) If a successor Trustee with respect to the Notes of a Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes of such Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee with respect to the Notes of a Series, after written request by any Holder of Notes of such Series who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the retiring Trustee with respect to each Series of Notes for which it is acting as trustee under this Indenture. The successor Trustee will send a notice of its succession to Holders of each such Series. The retiring Trustee will promptly transfer all property held by it as trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee with respect to expenses and liabilities incurred by it prior to such replacement. The retiring Trustee shall have no responsibility or liability for the action or inaction of the successor Trustee.

Section 7.09 *Successor Trustee by Merger, etc*.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act will be the successor Trustee.

Section 7.10 *Eligibility; Disqualification*.

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11 *Preferential Collection of Claims Against the Company*.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE 8**
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

Unless this Section 8.01 is otherwise indicated to be inapplicable to the Notes of a particular Series by a Board Resolution, a supplemental indenture or an Officer's Certificate, the Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or Section 8.03 hereof be applied to all outstanding Notes of a Series upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

Unless this Section 8.02 is otherwise indicated to be inapplicable to the Notes of a particular Series by a Board Resolution, a supplemental indenture or an Officer's Certificate, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes of such Series on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes of such Series, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes of such Series and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes of such Series to receive payments in respect of the principal of or premium, if any, or interest on such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance*.

Unless this Section 8.03 is otherwise indicated to be inapplicable to the Notes of a particular Series by a Board Resolution, a supplemental indenture or an Officer's Certificate, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from its obligations under the covenants contained in Section 4.04 hereof as well as any additional covenants for a particular Series of Notes contained in a Board Resolution, a supplemental indenture or an Officer's Certificate delivered pursuant to Section 2.02(m) with respect to the outstanding Notes of such Series on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes of such Series will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders of such Series (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes of such Series, the Company may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this

Indenture and such Notes of such Series will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, and Section 6.01(3) hereof will not constitute an Event of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance in respect of the Notes of any Series under either Section 8.02 or Section 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of such Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm, or firm of independent public accountants, to pay the principal of and premium, if any, and interest on the outstanding Notes of such Series on the Stated Maturity for payment thereof (or the applicable redemption date, if applicable) and the Company must specify whether the Notes of such Series are being defeased to such Stated Maturity of the principal thereof or to a particular redemption date, which, in either case, requires the Company to deliver irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes of such Series at maturity or on the redemption date, as the case may be;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel stating that:

(A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(B) since the Issue Date, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall state that, the Holders of the outstanding Notes of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel stating that the Holders of the outstanding Notes of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default with respect to Notes of such Series shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any lien securing such borrowing);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance, as applicable, have been complied with.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes of any Series will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or Subsidiary of the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes of such Series. Notwithstanding anything to the contrary contained herein, this paragraph shall survive the termination of this Indenture and/or the resignation or removal of the Trustee.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to Company*.

Subject to applicable unclaimed property laws, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium, if any, or interest on any Note of any Series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Sections 8.02, 8.03 or 8.05 hereof, as the case may be, by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, including, in each case, any proceeding or other action contemplated under Section 6.01(5) or (6), then the Company's obligations under this Indenture and the Notes of the applicable Series will be revived and reinstated as though no deposit had occurred pursuant to Sections 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Sections 8.02, 8.03 and 8.05 hereof, as the case may be; *provided, however,* that if the Company makes any payment of principal of or premium, if any, or interest on any Note of such Series following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

## ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes*.

Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, notwithstanding Section 9.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Notes of one or more Series without the consent of any Holder of such Notes:

(1) to cure any ambiguity, defect or inconsistency, provided that no such action shall adversely affect the interests of the Holders in any material respect;

(2) to comply with Article 5;

(3) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(4) to evidence the assumption of the Company's obligations under this Indenture and the Notes by a successor thereto in the case of a consolidation or merger or a sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the properties or assets of the Company's and its Subsidiaries, taken as a whole;

(5) to comply with the provisions of any clearing agency, clearing corporation or clearing system, or the requirements of the Trustee or the registrar, relating to transfers and exchanges of the Notes pursuant to this Indenture;

(6) to make any change that would provide any additional rights or benefits to the Holders of the Notes of a Series, that would surrender any right, power or option conferred by this Indenture on the Company or, with respect to matters or questions arising under the Indenture or the Notes, that does not adversely affect in any material respect the legal rights of any Holder of such Notes;

(7) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(8) to conform the text of this Indenture (only with respect to the Notes of such Series) or any Board Resolution, supplemental indenture or Officer's Certificate with respect to the Notes of such Series to the description of notes contained in the offering document pursuant to which such Notes were sold;

(9) to provide for the issuance of and establish the form and terms and conditions of Notes of any Series as permitted by this Indenture;

(10) in the case of subordinated Notes, to make any change in the provisions of this Indenture or any supplemental indenture relating to subordination that would limit or terminate the benefits available to any holder of senior Indebtedness under such provisions; *provided* that such change is made in accordance with the provisions of such senior Indebtedness;

(11) to add to, change or eliminate any of the provisions of this Indenture with respect to Notes of a Series; although no such addition, change or elimination may apply to Notes of a Series created prior to the execution of such amendment and entitled to the benefit of such provision, nor may any such amendment modify the legal rights of a Holder of any such Note with respect to such provision, unless the amendment becomes effective only when there is no outstanding Note of a Series created prior to such amendment and entitled to the benefit of such provision;

(12) to secure the Company's obligations under the Notes and this Indenture;

(13) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or

(14) to allow any guarantor to execute a supplemental indenture and/or a note guarantee with respect to the Notes.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 11.03 hereof, the Trustee will join with the Company in the execution of such amended or supplemental indenture and make any further appropriate agreements and stipulations that may be therein contained unless such amended or supplemental indenture affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture.

Section 9.02 *With Consent of Holders of Notes*.

(a) Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture and the Notes of a Series with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes of such Series voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of or premium, if any, or interest on the Notes, except a payment default resulting from a declaration of acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes of the applicable Series voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, upon receipt by the Trustee of evidence of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 11.03 hereof, the Trustee will join with the Company in the execution of such amended or supplemental indenture and make any further appropriate agreements and stipulations that may be therein contained unless such amended or supplemental indenture affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplemental indenture or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplemental indenture or waiver under this Section 9.02 becomes effective, the Company will send to the Holders of Notes affected thereby a notice briefly describing the amendment, supplemental indenture or waiver. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amendment, supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes of a Series then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or such Notes.

(b) Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate establishing such Series, without the consent of each Holder of Notes affected (whether in aggregate holding a majority in principal amount of Notes of such Series or not), an amendment, supplemental indenture or waiver may not be made that, as to any non-consenting Holder of Notes:

(1) reduces the percentage of principal amount of outstanding Notes of any Series whose Holders must consent to an amendment, supplemental indenture or waiver;

(2) reduces the rate of interest on any Note (or changes the index or reduces the spread for any Note bearing interest at a floating rate);

(3) reduces the principal amount of or premium, if any, on any Note or changes the Stated Maturity of any Note;

(4) changes the place, manner or currency of payment of principal of or premium, if any, or interest on any Note;

(5) makes any change in the provisions of this Indenture relating to seniority or subordination of any Note that adversely affects the rights of any Holder under such provisions;

(6) reduces the principal amount of Discount Notes payable upon acceleration of the maturity thereof;

(7) waives a Default or Event of Default in the payment of the principal of or premium, if any, or interest on the Notes (except a rescission of the declaration of acceleration of the Notes of any Series by the Holders of a majority in principal amount of the outstanding Notes of such Series and a waiver of the payment default resulting from such declaration has been rescinded);

(8) makes any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of or premium, if any, or interest on the Notes or the right to institute suit for the enforcement of any such payments;

(9) waives a payment with respect to any Note payable on redemption at the option of the Company or repurchase at the option of the Holder thereof or changes any of the provisions with respect to the redemption or repurchase of any such Note; or

(10) makes any change in the amendment and waiver provisions of this Section 9.02(b).

Section 9.03 *Compliance with Trust Indenture Act*.

Every amendment or supplemental indenture to this Indenture or the Notes of one or more Series will be set forth in an amended or supplemental indenture that complies with the TIA as then in effect.

Section 9.04 *Revocation and Effect of Consents*.

Until an amendment, supplemental indenture or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of such Note and every subsequent Holder of such Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on such Note. However, any such Holder of a Note or subsequent Holder of such Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplemental indenture or waiver becomes effective. An amendment, supplemental indenture or waiver becomes effective in accordance with its terms and thereafter binds every Holder of each Series affected by such amendment, supplemental indenture or waiver unless it is of the type described in any of clauses (1) through (10) of Section 9.02(b) (as such Section 9.02(b) may be amended or supplemented from time to time in accordance with this Indenture), in which case the amendment, supplemental indenture or waiver shall bind each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note.

Section 9.05 *Notation on or Exchange of Notes*.

The Trustee at the request of the Company may place an appropriate notation about an amendment, supplemental indenture or waiver on any Note of the applicable Series thereafter authenticated. The Company, in exchange for all Notes of that Series, may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes of that Series that reflect the amendment, supplemental indenture or waiver.

Failure to make the appropriate notation or issue a new Note of that Series will not affect the validity and effect of such amendment, supplemental indenture or waiver.

Section 9.06 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In executing any amended or supplemental indenture, the Trustee will receive, unless otherwise waived by the Trustee, and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 11.03 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that the amended or supplemental indenture is the valid and binding obligation of the Company, in accordance with its terms.

## ARTICLE 10
SATISFACTION AND DISCHARGE

Section 10.01 *Satisfaction and Discharge*.

Unless otherwise indicated for a particular Series of Notes by a Board Resolution, a supplemental indenture or an Officer's Certificate, this Indenture will be discharged and will cease to be of further effect (except as hereinafter provided in this Section 10.01) with respect to the Notes of a Series and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to all Notes of such Series issued hereunder, when:

(1) either:

(a) all Notes of such Series that have been authenticated and, except lost, stolen or destroyed Notes of such Series that have been replaced or paid and Notes of such Series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes of such Series that have not been delivered to the Trustee for cancellation

1. have become due and payable,

2. will become due and payable at their Stated Maturity within one year, or

3. if redeemable in accordance with the terms of such Notes and this Indenture, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders of Notes of such Series, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on such Notes not delivered to the Trustee for cancellation, including all principal, premium, if any, and interest (in the case of Notes of such Series that have become due and payable, on or prior to the date of such deposit) or to the Stated Maturity or redemption date, as the case may be;

(2) the Company has paid or caused to be paid all sums payable by it under this Indenture with respect to Notes of such Series; and

(3) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes of such Series at maturity or on the redemption date, as the case may be.

In addition, Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge of the Notes of such Series have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to clause (1) of this Section 10.01, the provisions of Sections 2.04, 2.05, 2.07, 2.08, 8.06, 8.07 and 10.02 hereof and this Section 10.01 will survive. In addition, nothing in this Section 10.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture with respect to Notes of such Series.

Section 10.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof with respect to the Notes of a Series shall be held in trust and applied by it, in accordance with the provisions of the Notes of such Series and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

Section 10.03 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 10.01 or 10.02 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture with respect to Notes of such Series and the Notes of such Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 or 10.02 hereof until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 10.01 or 10.02 hereof; *provided, however,* that if the Company has made any payment of principal of or premium, if any, or interest on any Notes of such Series following of the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

## ARTICLE 11
MISCELLANEOUS

Section 11.01 *Notices*.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company: Verint Systems Inc.
330 South Service Road,
Melville, New York 11747
Attention: Alan Roden

| | |
|---|---|
| With a copy to: | Jones Day<br>77 West Wacker, Suite 3500<br>Chicago, IL 60601-1692<br>Attention: Bradley C. Brasser |
| If to the Trustee: | Wilmington Trust, National Association<br>50 South Sixth Street, Suite 1290<br>Minneapolis, MN 55402<br>Attention: Verint Administrator |
| With a copy to: | Dorsey & Whitney LLP<br>50 South Sixth Street, Suite 1290<br>Minneapolis, MN 55402<br>Attention: Steven Heim |

The Company or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder (other than the Depositary) will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the Security Register kept by the Registrar. Any notice or communication will also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder of Notes or any defect in it will not affect its sufficiency with respect to other Holders of Notes. Where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee) pursuant to the standing instructions from such Depositary.

If a notice or communication is sent in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company sends a notice or communication to Holders, it will send a copy to the Trustee and each Agent at the same time.

Section 11.02 *Communication by Holders of Notes with Other Holders of Notes.*

Holders of Notes may communicate pursuant to TIA § 312(b) with other Holders of Notes of the same or other Series with respect to their rights under this Indenture or the Notes of that Series or all Series. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 11.03 *Certificate and Opinion as to Conditions Precedent*.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officer's Certificate in form reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.04 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.04 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied.

Section 11.04 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied; *provided*, *however*, that an Opinion of Counsel can rely as to matters of fact on an Officer's Certificate or a certificate of a public official.

Section 11.05 *Rules by Trustee and Agents*.

The Trustee may make reasonable rules for action by or at a meeting of Holders of one or more Series. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.06 *Recourse Against Others*.

No past, present or future director, manager, officer, employee, incorporator, member, shareholder or agent of the Company, as such, will have any liability for any obligations of the Company under the this Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 11.07 *Governing Law; Waiver of Jury Trial*.

THIS INDENTURE AND THE NOTES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS AND PRINCIPLES THEREOF. THE COMPANY AND THE TRUSTEE, AND EACH HOLDER OF A NOTE, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 11.08 *No Adverse Interpretation of Other Agreements*.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.09 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.10 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 11.11 *Counterparts*.

The parties may sign any number of copies of this Indenture and in separate counterparts, each of which will be deemed to be an original and all of them together shall constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

Section 11.12 *Table of Contents, Headings, etc*.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture are for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 11.13 *Immunity of Shareholders, Directors, Officers and Agents of the Company.*

The obligations of the Company under the Indenture and the Notes of any Series and all documents delivered in the name of the Company in connection herewith and therewith do not and shall not constitute personal obligations of the directors, officers, employees, agents or shareholders of the Company or any of them, and shall not involve any claim against or personal liability on the part of any of them, and all persons including the Trustee shall look solely to the assets of the Company for the payment of any claim thereunder or for the performance thereof and shall not seek recourse against such

directors, officers, employees, agents or shareholders of the Company or any of them or any of their personal assets for such satisfaction. The performance of the obligations of the Company under the Indenture and Notes of any Series and all documents delivered in the name of the Company in connection therewith shall not be deemed a waiver of any rights or powers of the Company, its directors or its shareholders under the Company's Restated Articles of Incorporation.

Section 11.14 *USA PATRIOT Act.*

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

Section 11.15 *Force Majeure*.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder or other document or agreement entered into in connection herewith arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes, acts of God and interuptions, loss or malfunctions of utilities, communications or computer (software and hardware) services provided to the Trustee by third parties; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following pages]

SIGNATURES

Dated as of June 18, 2014

THE COMPANY:

VERINT SYSTEMS INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Chief Financial Officer

*[Signature Page to Base Indenture]*

TRUSTEE:

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Banking Officer

*[Signature Page to Base Indenture]*

**Exhibit 4.2**

EXECUTION VERSION

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VERINT SYSTEMS INC.

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee

First Supplemental Indenture

Dated as of June 18, 2014

to Indenture

Dated as of June 18, 2014

1.50% Convertible Senior Notes due 2021

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SUPPLEMENTAL INDENTURES

**EXHIBIT**

FIRST SUPPLEMENTAL INDENTURE dated as of June 18, 2014 (this "**Supplemental Indenture**") between Verint Systems Inc., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01), and Wilmington Trust, National Association, a national banking association, as trustee (the "**Trustee**," as more fully set forth in Section 1.01), supplementing the Indenture, dated as of June 18, 2014, between the Company and the Trustee (the "**Base Indenture**" and, with respect to the Notes, the Base Indenture, as amended and supplemented by this Supplemental Indenture, and as it may be further amended or supplemented from time to time with respect to the Notes, the "**Indenture**").

W I T N E S S E T H:

WHEREAS, the Company executed and delivered the Base Indenture to the Trustee to provide, among other things, for the issuance, from time to time, in an unlimited aggregate principal amount, one or more Series of Notes to be established by the Company under, and authenticated and delivered as provided in, the Base Indenture;

WHEREAS, Sections 2.01 and 2.02 of the Base Indenture provide for the Company to issue Notes thereunder in the form and on the terms set forth in one or more Board Resolutions and Officer's Certificates or supplemental indentures thereto;

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 1.50% Convertible Senior Notes due 2021 (the "**Notes**"), initially in an aggregate principal amount not to exceed $400,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Supplemental Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided;

WHEREAS, the conditions set forth in the Base Indenture for the execution and delivery of this Supplemental Indenture have been complied with; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Supplemental Indenture provided, the valid, binding and legal obligations of the Company, and this Supplemental Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Supplemental Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

## ARTICLE 1
## DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of the Indenture shall have the respective meanings specified in this Section 1.01 and, to the extent applicable, supersede the definitions thereof in the Base Indenture. All words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) shall have the same meanings as in the Base Indenture. The words "herein," "hereof," "hereunder," and words of similar import (i) when used with regard to any specified Article, Section or sub-division, refer to such Article, Section or sub-division of this Supplemental Indenture and (ii) otherwise, refer to the Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 6.04.

"**Additional Shares**" shall have the meaning specified in Section 11.03(a).

"**Bid Solicitation Agent**" means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 11.01(b)(i). The Trustee shall initially act as the Bid Solicitation Agent.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder, except that solely for the purpose of clause (a) and (c) of the definition of Change in Control and for the purpose of the definition of "Continuing Directors", "Board of Directors" means the full board of directors of the Company.

"**Business Day**" means, with respect to any Note, any day other than a Saturday, a Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

"**Cash Settlement**" shall have the meaning specified in Section 11.02(a).

"**Change in Control**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing 50% or more of the total voting power of the Company's Common Equity or has the power, directly or indirectly, to elect a majority of the members of the Board of Directors;

(b) the Company consolidates with, enters into a binding share exchange, merger or similar transaction with or into another Person or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets, or any Person consolidates with, or merges with or into, the Company, in any such event; *provided* that any merger, binding share exchange, consolidation or similar transaction pursuant to which the persons that "beneficially owned," directly or indirectly, the shares of the Company's Common Equity immediately prior to such transaction "beneficially own," directly or indirectly, shares of the Company's Common Equity representing at least a majority of the total voting power of all outstanding classes of Common Equity of the surviving or transferee Person and such holders' proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction will not constitute a Change in Control;

(c) the first day on which a majority of the members of the Board of Directors are not Continuing Directors; or

(d) the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company;

*provided*, *however*, that, notwithstanding the foregoing, a transaction or transactions described in clause (b) above shall not constitute a Change in Control, if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors), or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes the Reference Property for the Notes.

"**Clause A Distribution**" shall have the meaning specified in Section 11.04(c).

"**Clause B Distribution**" shall have the meaning specified in Section 11.04(c).

"**Clause C Distribution**" shall have the meaning specified in Section 11.04(c).

"**close of business**" means 5:00 p.m. (New York City time).

"**Closing Sale Price**" of the Common Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) at 4:00 p.m. (New York City time) on such date as reported in composite transactions for The NASDAQ Global

Select Market, or, if the Common Stock is not listed on The NASDAQ Global Select Market, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Closing Sale Price**" shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. at 4:00 p.m. (New York City time) on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system). If the Common Stock is not so reported, the "**Closing Sale Price**" shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms, which may include one or more of the Underwriters, selected by the Company for this purpose. Any such determination will be conclusive absent manifest error.

"**Combination Settlement**" shall have the meaning specified in Section 11.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share, at the date of this Supplemental Indenture, subject to Section 11.07.

"**Company**" shall have the meaning specified in the first paragraph of this Supplemental Indenture, and subject to the provisions of Article 10, shall include its successors and assigns.

"**Continuing Directors**" means, as of any date of determination, any member of the Board of Directors who (i) was a member of such Board of Directors on the date of the original issuance of the Notes, or (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election.

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Date**" shall have the meaning specified in Section 11.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 11.01(a).

"**Conversion Period**" with respect to any Note surrendered for conversion means: (i) if the relevant Conversion Date occurs prior to the Final Period Date, the 50 consecutive Trading Day period beginning on, and including, the third Trading Day immediately following such Conversion Date; and (ii) if the relevant Conversion Date occurs on or after the Final Period Date, the 50 consecutive Trading Day period beginning on, and including, the 52nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Conversion Price**" means as of any date, $1,000, *divided by* the Conversion Rate as of such date.

"**Conversion Rate**" shall have the meaning specified in Section 11.01(a).

"**Daily Conversion Value**" means, for each Trading Day during the Conversion Period, one-fiftieth (1/50th) of the product of (a) the applicable Conversion Rate on such Trading Day and (b) the Daily VWAP on such Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount (if any), *divided by* 50.

"**Daily Net Share Settlement Number**" has the meaning specified in the definition of "Daily Settlement Amount."

"**Daily Settlement Amount**," for each $1,000 principal amount of Notes validly surrendered for conversion, and for each Trading Day during the Conversion Period, shall consist of:

(a) if the Daily Conversion Value on such Trading Day is less than or equal to the Daily Measurement Value, a cash payment equal to the Daily Conversion Value; or

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, the sum of (i) a number of shares of Common Stock equal to (x) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (y) the Daily VWAP for such Trading Day (such quotient, the "**Daily Net Share Settlement Number**") and (ii) a cash payment equal to the Daily Measurement Value.

"**Daily VWAP**" of the Common Stock (or any security that is part of the Reference Property into which the Common Stock has been converted, if applicable) means, for any Trading Day, the per share volume-weighted average price of the Common Stock (or such other security) as displayed under the heading "Bloomberg VWAP" on Bloomberg Page "VRNT UQ <equity> AQR" (or its equivalent successor if such page is not available, or the Bloomberg Page for any security that is part of the Reference Property into which the Common Stock has been converted, if applicable) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day or, if such volume-weighted average price is unavailable (or the Reference Property is not a security), the market value of one share of the Common Stock (or other Reference Property) on such Trading Day as determined in good faith by the Board of Directors in a commercially reasonable manner, using a volume-weighted average price method (unless the Reference Property is not a security). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Distributed Property**" shall have the meaning specified in Section 11.04(c).

"**Effective Date**" shall have the meaning specified in Section 11.03(c).

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Expiration Date**" shall have the meaning specified in Section 11.04(e).

"**Final Period Date**" means December 1, 2020.

"**Form of Assignment and Transfer**" shall mean the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" shall mean the "Form of Fundamental Change Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Notice of Conversion**" shall mean the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Fundamental Change**" means the occurrence of a Change in Control or a Termination of Trading.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 12.01(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 12.01(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 12.01(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 12.01(a).

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Global Note Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

"**Indenture**" has the meaning specified in the first paragraph of this Supplemental Indenture.

"**Interest Payment Date**" means each June 1 and December 1 of each year, beginning on December 1, 2014.

"**Make-Whole Adjustment Event**" means (i) any Change in Control described in clauses (a) and (b) of such definition (determined after giving effect to any exceptions or exclusions from such definition but without giving effect to the proviso in clause (b) of the definition thereof) and (ii) any Termination of Trading.

"**Market Disruption Event**" means, for the purpose of determining Settlement Amounts, (i) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (ii) the occurrence or existence for more than one half-hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by The NASDAQ Global Select Market or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

"**Maturity Date**" means June 1, 2021.

"**Measurement Period**" shall have the meaning specified in Section 11.01(b)(i).

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Supplemental Indenture.

"**Notice of Conversion**" shall have the meaning specified in Section 11.02(b).

"**open of business**" means 9:00 a.m. (New York City time).

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 7.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under the Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.08 of the Base Indenture or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.08 of the Base Indenture unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 11 and required to be canceled pursuant to Section 2.07; and

(e) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.08 (other than Notes repurchased by cash settled swaps or other derivatives).

"**Physical Notes**" means permanent certificated Notes in registered form issued in denominations of $1,000 principal amount and multiples thereof.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Reference Property**" shall have the meaning specified in Section 11.07(a).

"**Regular Record Date**," with respect to any Interest Payment Date, shall mean the May 15 or November 15 (whether or not such day is a Business Day) immediately preceding the applicable June 1 or December 1 Interest Payment Date, respectively.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "**Scheduled Trading Day**" means a Business Day.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

**"Settlement Amount"** has the meaning specified in Section 11.02(a)(v).

"**Settlement Method**" means, with respect to any conversion of Notes, Stock Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company pursuant to this Supplemental Indenture.

"**Settlement Notice**" has the meaning specified in Section 11.02(a)(iii).

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act, or a group of Subsidiaries that, taken together, would meet such definition of "significant subsidiary."

"**Share Exchange Event**" shall have the meaning specified in Section 11.07(a).

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion as specified in (or deemed to be specified in) the Settlement Notice related to any converted Notes.

"**Spin-Off**" shall have the meaning specified in Section 11.04(c).

"**Stock Price**" shall have the meaning specified in Section 11.03(c).

"**Stock Settlement**" shall have the meaning specified in Section 11.02(a).

"**Successor Company**" shall have the meaning specified in Section 10.02(a).

"**Supplemental Indenture**" has the meaning specified in the first paragraph of this Supplemental Indenture.

"**Termination of Trading**" means that the Common Stock or the Reference Property in respect of the Notes are not approved for listing on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

"**Trading Day**" means a day on which (i) The NASDAQ Global Select Market or, if the Common Stock is not listed on The NASDAQ Global Select Market, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day and (ii) a Closing Sale Price for the Common Stock is available on such securities exchange or market; *provided* that a Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange.

For the purpose of determining Settlement Amounts only, "**Trading Day**" means a day on which (i) there is no Market Disruption Event and (ii) The NASDAQ Global Select Market or, if the Common Stock is not listed on The NASDAQ Global Select Market, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day; *provided* that a Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

"**Trading Price**" of the Notes on any date of determination means the average of the secondary market bid quotations per $1,000 principal amount of Notes obtained by the Bid Solicitation Agent for $2 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if at least three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids can reasonably be obtained, then the average of these two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, then that one bid shall be used. If on any date of determination (a) the Bid Solicitation Agent cannot reasonably obtain at least one bid for $2 million principal amount of Notes from an independent nationally recognized securities dealer,

(b) the Company fails to request the Bid Solicitation Agent to obtain bids when required, or (c) the Company requests the Bid Solicitation Agent to obtain bids and the Bid Solicitation Agent fails to make such determination, then, in each case, the Trading Price per $1,000 principal amount of Notes on such date of determination or on each Trading Day of such failure (as the case may be) shall be deemed to be less than 98% of the Closing Sale Price of the Common Stock on such date *multiplied by* the then-current Conversion Rate.

"**Trigger Event**" shall have the meaning specified in Section 11.04(c).

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Supplemental Indenture until a successor trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder.

"**Underwriters**" means Deutsche Bank Securities Inc., Goldman, Sachs & Co., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, Barclays Capital Inc., and HSBC Securities (USA) Inc.

"**unit of Reference Property**" shall have the meaning specified in Section 11.07(a).

"**Valuation Period**" shall have the meaning specified in Section 11.04(c).

"**$**" means United States Dollars.

Section 1.02. *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.04. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

## ARTICLE 2
## ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Scope of Supplemental Indenture*. This Supplemental Indenture amends and supplements the provisions of the Base Indenture, to which provisions reference is hereby made. The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time in accordance herewith, and shall not apply to any other Series of Notes that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Series of Notes specifically incorporates such changes, modifications and supplements. For all purposes under the Base Indenture, the Notes shall constitute a single Series of Notes, and with regard to any matter requiring the consent under the Base Indenture of Holders of multiple Series of Notes voting together as a single class, the consent of Holders of the Notes voting as a separate class shall also be required and the same threshold shall apply. The provisions of this Supplemental Indenture shall supersede, with

respect to the Notes, any conflicting provisions in the Base Indenture. Any reference in this Supplemental Indenture to a section, provision or other term of this Supplemental Indenture superseding or otherwise replacing a section, provision or other term of the Base Indenture shall do so only with respect to the Notes.

Section 2.02. *Designation and Amount.* The Notes are hereby created and authorizes as a single Series of Notes under the Base Indenture. The Notes shall be designated as the "1.50% Convertible Senior Notes due 2021." The aggregate principal amount of Notes that may be authenticated and delivered under this Supplemental Indenture is initially limited to $400,000,000, subject to Section 2.08 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 9.05, Section 11.02(d) and Section 12.03(c) of this Supplemental Indenture, and Section 2.08 and Section 2.11 of the Base Indenture.

Section 2.03. *Form of Notes.* The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of the Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Supplemental Indenture as may be required by the Global Note Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of the Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Global Note Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Supplemental Indenture. Payment of principal

(including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.04. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Security Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest shall be payable at the office or agency of the Company maintained by the Company for such purposes, which shall initially be the Corporate Trust Office of the Trustee. The Company shall pay interest through the Paying Agent (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $1,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Security Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $1,000,000, either by check mailed to such Holders or, upon application by such Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account, which application shall remain in effect until the Holder notifies, in writing, the Paying Agent to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes *plus* one percent, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company through the Paying Agent, at the Company's election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided.

Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be sent to each Holder at its address as it appears in the Security Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so sent, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.04(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.13 of the Base Indenture shall be superseded in its entirety by this Section 2.04(c), and any reference in the Base Indenture to such Section 2.13 shall be deemed to refer instead to this Section 2.04(c).

Section 2.05. *Exchange and Registration of Transfer of Notes; Depositary; Registrar; Paying Agent.* (a) The Company hereby appoints the Trustee at the Corporate Trust Office of the Trustee as Registrar and Paying Agent as set forth in Section 2.04 of the Base Indenture. Notwithstanding anything in the Base Indenture to the contrary, none of the Company, the Trustee, the Registrar or any co-registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 12.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with the Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under the Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the second paragraph of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Global Note Custodian) in accordance with the Indenture and the procedures of the Depositary therefor. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for the Depositary.

(c) Section 2.14(b) of the Base Indenture shall be superseded by this Section 2.05(c), and any reference in the Base Indenture to Section 2.14(b) thereof shall be deemed to refer instead to this Section 2.05(c).

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and an Authentication Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Global Note Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Global Note Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Global Note Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes.* Solely for purposes of the Notes, the third paragraph of Section 2.08 of the Base Indenture shall be replaced in its entirety

with the following: "In case any Note is destroyed, lost or stolen (a) during Conversion Period therefor or (b) following the expiration of the Conversion Period commencing on the 52nd Scheduled Trading Day immediately preceding the Maturity Date but prior to the Maturity Date, then the Company in its discretion may, instead of issuing a new Note, deliver the Settlement Amount in respect of such Note (if the Holder thereof elects conversion) or pay such note on the Maturity Date (if the Holder does not election conversion).

Section 2.07. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's Agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof.

Section 2.08. *Additional Notes; Repurchases.* The Company may, without the consent of the Holders and notwithstanding Section 2.02, reopen the Indenture and issue additional Notes hereunder with the same terms and with the same CUSIP number as the Notes initially issued hereunder in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes, such additional Notes shall have a separate CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee an Authentication Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 11.03 of the Base Indenture, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with Section 2.07.

## ARTICLE 3
## SATISFACTION AND DISCHARGE

Section 3.01. *Applicability of Article 8 and Section 10.01 of the Base Indenture.*

(a) Section 10.01 of the Base Indenture shall be superseded by Section 3.02 hereof, and any reference in the Base Indenture to Section 10.01 thereof or any provision contained therein shall be deemed to refer to Section 3.02 hereof or the applicable provision contained in Section 3.02 hereof.

(b) Article 8 of the Base Indenture and any reference in the Base Indenture to any such Article or the provisions contained therein shall be deemed deleted with respect to the Notes.

Section 3.02. *Satisfaction and Discharge*. The Indenture shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at

the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08 of the Base Indenture) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion (and determination of related Settlement Amounts) or otherwise, cash, shares of Common Stock or a combination thereof, as applicable, solely to satisfy the Company's Conversion Obligation, sufficient to pay all of the outstanding Notes and all other sums due and payable under the Indenture by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the Indenture have been complied with. Notwithstanding the satisfaction and discharge of the Indenture, the obligations of the Company to the Trustee under Section 7.07 of the Base Indenture shall survive.

## ARTICLE 4
## PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal and Interest.* Solely for purposes of the Notes, and for the avoidance of doubt, payment of principal as required under Section 4.01 of the Base Indenture shall include the Fundamental Change Repurchase Price.

Section 4.02. *Conversion Agent.* The Paying Agent initially shall be located at the Corporate Trust Office of the Trustee. The Company shall also maintain an office or agency where the Notes may be surrendered for conversion ("**Conversion Agent**"). The Company will give, or cause to be given, prompt written notice to the Trustee of the location, and any change in the location, of the Conversion Agent. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, Notes may be surrendered for conversion at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate additional offices or agencies where the Notes may be surrendered for conversion and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The term "**Conversion Agent**" includes any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Conversion Agent and the Corporate Trust Office of the Trustee as the office or agency where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and the Indenture may be served; provided, however, no service of legal process on the Company may be made at any office of the Trustee.

Section 4.03. *Provisions as to Paying Agent.*

(a) The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) Anything in this Section 4.03 or the Base Indenture to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of the Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by Section 2.05 of the Base Indenture, such sums or amounts to be held by the Trustee upon the trusts contained in Section 2.05 of Base Indenture and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(c) Notwithstanding anything in the Base Indenture to the contrary, but subject to applicable unclaimed property laws, any money and shares of Common Stock deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable) or interest has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, notice that such money and shares of Common Stock remain unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money and shares of Common Stock then remaining will be repaid or delivered to the Company.

Section 4.04. *Compliance Certificate; Statements as to Defaults*. Section 4.03 of the Base Indenture shall be superseded in its entirety by this Section 4.04, and any reference in the Base Indenture to such Section 4.03 shall be deemed to refer instead to this Section 4.04. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on January 31, 2015) an Officer's Certificate stating whether or not the signers thereof have knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under the Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Section 4.05. *Reports.* Section 4.02 of the Base Indenture shall be superseded in its entirety by this Section 4.05, and any reference in the Base Indenture to such Section 4.02 shall be deemed to refer instead to this Section 4.05. (a) So long as any of the Notes are outstanding, the Company shall (i) file with the Commission within the time periods prescribed by the Commission's rules and regulations and (ii) furnish to the Trustee and the Holders of the Notes, within 15 days after the date on which the Company would be required to file the same with the Commission pursuant to the Commission's rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), all quarterly and annual financial information required to be contained in Forms 10-Q and 10-K and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors. The Company shall not be required to file any report or other information with the Commission if the Commission does not permit such filing, although such reports will be required to be furnished to the Trustee. Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor system) shall be deemed to be furnished to the Trustee and the Holders of the Notes for purposes of this Section 4.05 at the time such document or report is filed via the EDGAR system (or such successor system), it being understood that the Trustee shall have no responsibility to determine if such deliveries or filings have been made.

(b) Delivery of the reports and documents described in subsection (a) above to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

Section 4.06. *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture.

## ARTICLE 5
## LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Lists of Holders.* Section 2.06 of the Base Indenture shall be superseded in its entirety by this Section 5.01, and any reference in the Base Indenture to such Section 2.06 shall be deemed to refer instead to this Section 5.01. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, at least seven Business Days before each Interest Payment Date, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may

reasonably request in order to so provide any such notices, which shall be deemed the applicable Regular Record Date with respect to lists provided in connection with an Interest Payment Date) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Registrar.

Section 5.02. *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

## ARTICLE 6
## DEFAULTS AND REMEDIES

Section 6.01. *Applicability of Article 6 of the Base Indenture.* Article 6 of the Base Indenture shall not apply to the Notes. Instead, the provisions set forth in this Article 6 shall, with respect to the Notes, supersede in its entirety Article 6 of the Base Indenture, and all references in the Base Indenture to Article 6 thereof and the provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article 6 and the applicable provisions set forth in this Article 6, respectively. Without limiting the forgoing, all references in Section 7.07 of the Base Indenture to Section 6.01(5) or Section 6.01(6) shall, with respect to the Notes, be deemed to be references to Section 6.02(i) or Section 6.02(j) hereof, respectively.

Section 6.02. *Events of Default*. The following events shall be *"***Events of Default**" with respect to the Notes:

(a) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise;

(b) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 days;

(c) failure by the Company to pay or deliver, as the case may be, the Conversion Obligation owing upon conversion of any Note (including any Additional Shares) within five Business Days;

(d) failure to pay the Fundamental Change Repurchase Price of any Note when due;

(e) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 12.01(c) or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or 14.01(b)(iii), in each case when due;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or the Indenture;

(g) default by the Company or any Significant Subsidiary of the Company 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 or payment obligation in excess of $27,500,000 (or its foreign currency equivalent) in the aggregate of the Company or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(h) failure by the Company or any Significant Subsidiary of the Company to pay any final and non-appealable judgment entered by a court of competent jurisdiction for the payment of more than $27,500,000 (or its foreign currency equivalent) (excluding any amounts covered by insurance or bond) rendered against the Company or such Significant Subsidiary of the Company, which judgment is not paid, discharged or stayed within 60 days; provided that a judgment is non-appealable following (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 Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company, any such 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 the Company, any such 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, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company, such 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 the Company, such 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 days.

Section 6.03. *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.02(i) or Section 6.02(j) with respect to the Company or any of its Significant Subsidiaries), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 7.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of all

the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in the Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 6.02(i) or Section 6.02(j) with respect to the Company or any of its Significant Subsidiaries occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes *plus* one percent at such time) and amounts due to the Trustee pursuant to Section 7.07 of the Base Indenture, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Supplemental Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.10, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.04. *Additional Interest.* Notwithstanding anything in the Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for (a) an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.05 or (b) an Event of Default relating to the Company's failure to file with the Trustee pursuant to Section 314(a)(1) of the TIA any documents or reports that we are required to file with the Commission pursuant to Section 13 or 15(s) of the Exchange Act (the obligations described in clauses (a) and (b), the "**Reporting Obligations**") shall consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (i) 0.25% per annum of the aggregate principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which such Event of Default is cured or waived or (y) the 90th day immediately following, and

including, the date on which such Event of Default first occurred, and (ii) if such Event of Default has not been cured or validly waived prior to the 91st day immediately following, and including, the date on which such Event of Default first occurred, 0.50% per annum of the aggregate principal amount of the Notes outstanding for each day during the period beginning on, and including, the 91st day immediately following, and including, the date on which such Event of Default first occurred and ending on the earlier of (x) the date on which such Event of Default is cured or waived or (y) the 180th day immediately following, and including, the date on which such Event of Default first occurred. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as regular interest on the Notes. On the 180th day after such Event of Default (if the Event of Default relating to the Company's failure to comply with the Reporting Obligations is not cured or waived prior to such 180th day), the Additional Interest shall cease to accrue and the Notes shall be immediately subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.04 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.03.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must in writing notify all Holders of the Notes, the Trustee and the Paying Agent of such election on or prior to the close of business on the fifth Business Day prior to the end of the 60-day period specified in Section 6.02(f). Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.03.

Section 6.05. *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (c) of Section 6.01 shall have occurred, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or

deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.07 of the Base Indenture; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.07 of the Base Indenture, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under the Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of the Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under the Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.10 or any rescission and annulment pursuant to Section 6.03 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.06. *Application of Monies or Property Collected by Trustee.* Any monies or property collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies or property, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

**First**, to the payment of all amounts due the Trustee under Section 7.07 of the Base Indenture;

**Second**, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

**Third**, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time *plus* one percent, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

**Fourth**, to the payment of the remainder, if any, to the Company.

Section 6.07. *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of the Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to the Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such reasonable security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee in writing by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60 day period pursuant to Section 6.10;

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of the Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under the Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.07, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of the Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in the Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by the Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in the Indenture, or to enforce any other legal or equitable right vested in the Trustee by the Indenture or by law.

Section 6.09. *Remedies Cumulative and Continuing.* Except as provided in Section 2.08 of the Base Indenture, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in the Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.07, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.10. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* Subject to Section 7.02(f) of the Base Indenture, the Holders of a majority of the aggregate

principal amount of the Notes at the time outstanding determined in accordance with Section 7.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided*, *however*, that (a) such direction shall not be in conflict with any rule of law or with the Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that the Trustee determines is unduly prejudicial to the rights of any other Holder. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 7.04 may on behalf of the Holders of all of the Notes waive the Company's compliance with any term of the Indenture, including with respect to any past Default or Event of Default hereunder and its consequences, except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.10, said Default or Event of Default shall for all purposes of the Notes and the Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.11. *Notice of Defaults.* The Trustee shall, within 90 days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge (or within 90 days after such Default becomes known to such Responsible Officer), send to all Holders as the names and addresses of such Holders appear upon the Security Register, notice of all Defaults actually known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as a committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.12. *Undertaking to Pay Costs.* All parties to the Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under the Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.12 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any

suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 7.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Supplemental Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 11.

## ARTICLE 7
## CONCERNING THE HOLDERS

Section 7.01. *Action by Holders*. Whenever in this Supplemental Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 8, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 7.02. *Proof of Execution by Holders.* Subject to the provisions of Section 7.01 and Section 7.02 of the Base Indenture and Section 8.05 hereof, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Security Register or by a certificate of the Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 8.06.

Section 7.03. *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Registrar may deem the Person in whose name a Note shall be registered upon the Security Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.04) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon

its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in the Indenture or the Notes, following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of the Indenture.

Section 7.04. *Company-Owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under the Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 7.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01 of the Base Indenture, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 7.05. *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Supplemental Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at the Corporate Trust Office of the Trustee and upon proof of holding as provided in Section 7.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 8
HOLDERS' MEETINGS

Section 8.01. *Purpose of Meetings*. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 8 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under the Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under the Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Section 7.08 of the Base Indenture;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 9.03; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of the Indenture or under applicable law.

Section 8.02. *Call of Meetings by Trustee*. The Trustee may at any time call a meeting of Holders to take any action specified in Section 8.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 7.01, shall be sent to Holders of such Notes at their addresses as they shall appear on the Security Register. Such notice shall also be sent to the Company. Such notices shall be sent not less than twenty nor more than ninety days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 8.03. *Call of Meetings by Company or Holders*. In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have sent the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 8.01, by sending notice thereof as provided in Section 8.02.

Section 8.04. *Qualifications for Voting*. To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting

or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 8.05. *Regulations*. Notwithstanding any other provisions of the Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 8.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 7.04, at any meeting of Holders each Holder or proxy-holder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 8.02 or Section 8.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 8.06. *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was sent as provided in Section 8.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 8.07. *No Delay of Rights by Meeting*. Nothing contained in this Article 8 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Supplemental Indenture or of the Notes.

## ARTICLE 9
## SUPPLEMENTAL INDENTURES

Section 9.01. *Applicability of Article 9 of the Base Indenture*. Article 9 of the Base Indenture shall not apply to the Notes. Instead the provisions set forth in this Article 9 shall, with respect to the Notes, supersede in their entirety Article 9 of the Base Indenture, and all references in the Base Indenture to Article 9 thereof and the provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article 9 or the applicable provisions set forth in this Article 9, respectively.

Section 9.02. *Supplemental Indentures Without Consent of Holders*. The Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency that does not adversely affect the Holders of Notes;

(b) to provide for the assumption by a Successor Company of the obligations of the Company under the Indenture pursuant to Article 10;

(c) to add guarantees with respect to the Notes;

(d) to secure the Notes;

(e) to add to the covenants or Events of Defaults of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;

(f) to make any change that does not adversely affect the Holders of the Notes;

(g) to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA;

(h) upon the occurrence of a Share Exchange Event, solely (i) provide that the Notes are convertible into Reference Property, subject to Article 14 hereof and (ii) effect the related changes to the terms of the Notes described under Section 11.07, in each case, in accordance with the applicable provisions of this Supplemental Indenture; or

(i) to conform the provisions of the Indenture or the Notes to the "Description of Debt Securities" section of the prospectus of the Company dated June 9, 2014, as supplemented and/or amended by the "Description of Notes" section in the prospectus supplement relating to the Notes, dated June 12, 2014.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under the Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 9.03.

Section 9.03. *Supplemental Indentures with Consent of Holders*. With the consent (evidenced as provided in Article 7) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 7 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Supplemental Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) change the stated maturity of the principal of, or any interest on, the Notes;

(b) reduce the principal amount of, or interest on, the Notes;

(c) reduce the amount of principal payable upon acceleration of the maturity of the Notes;

(d) change the currency of payment of principal of, or interest on, the notes or change any Note's place of payment;

(e) impair the right of any Holder to receive payment of principal of, and interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on, or with respect to, the Notes;

(f) modify the provisions of Article 12 with respect to the purchase rights of the Holders in a manner adverse to Holders of Notes;

(g) change the ranking of the Notes;

(h) adversely affect the right of Holders to convert Notes (including the determination of Settlement Amounts); or

(i) modify provisions with respect to modification, amendment or waiver (including waiver of Events of Default), except to increase the percentage required for modification, amendment or waiver or to provide for consent of each affected Holder of Notes.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 9.06, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties, liabilities or immunities under this Supplemental Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 9.03 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall send to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Supplemental Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Supplemental Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Supplemental Indenture for any and all purposes.

Section 9.05. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may, at the Company's expense, bear a notation as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Board of Directors, to any modification of this Supplemental Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 2.03 of the Base Indenture) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 9.06. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee*. In addition to the documents required by Section 11.03 of the Base Indenture, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9 and is permitted or authorized by this Supplemental Indenture and is the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

## ARTICLE 10
## CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.01. *Applicability of Article 5 of the Base Indenture*. Article 5 of the Base Indenture shall not apply to the Notes. Instead the provisions set forth in this Article 10 shall, with respect to the Notes, supersede in their entirety Article 5 of the Base Indenture, and all references in the Base Indenture to Article 5 thereof and the provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article 10 or the applicable provisions set forth in this Article 10, respectively.

Section 10.02. *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 10.03, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**") (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if other than the Company) shall expressly assume, by supplemental indenture, all of the obligations of the Company under the Notes and the Indenture; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under the Indenture.

For purposes of this Section 10.02, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company and its Subsidiaries on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

Section 10.03. *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in the Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company

thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under the Indenture as the Notes theretofore or thereafter issued in accordance with the terms of the Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer, upon compliance with this Article 10 the Person named as the "Company" in the first paragraph of this Supplemental Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 10) may be dissolved, wound up and liquidated at any time thereafter and such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under the Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 10.04. *Opinion of Counsel to Be Given to Trustee*. No such consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 10.

## ARTICLE 11
## CONVERSION OF NOTES

Section 11.01. *Conversion Privilege*. (a) Subject to and upon compliance with the provisions of this Article 11, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 11.01(b), at any time prior to the close of business on the Business Day immediately preceding December 1, 2020 under the circumstances and during the periods set forth in Section 11.01(b), and (ii) irrespective of the conditions described in Section 11.01(b), during the period from, and including, December 1, 2020 to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 15.5129 shares of Common Stock (subject to adjustment as provided in this Article 11, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to the settlement provisions of Section 11.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding December 1, 2020, the Notes may be surrendered for conversion during the ten Trading Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per $1,000 principal amount of Notes, as determined following a written request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of

Trading Price set forth in this Supplemental Indenture. The Company shall provide written notice to the Bid Solicitation Agent of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent shall have no obligation to determine the Trading Price per $1,000 principal amount of Notes unless the Company has requested such determination, and the Company shall have no obligation to make such request unless a Holder of at least $2,000,000 aggregate principal amount of the Notes provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes on any Trading Day would be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on that date, at which time the Company shall instruct the Bid Solicitation Agent to determine the Trading Price per $1,000 principal amount of Notes beginning on such Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate. If (x) the Company is not acting as Bid Solicitation Agent and the Company does not instruct the Bid Solicitation Agent to determine the Trading Price per $1,000 principal amount of Notes when obligated as provided in the preceding sentence or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the preceding sentence, then, in either case, the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met, the Company shall so notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee). If, at any time after the Trading Price condition set forth above has been met, the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Sale Price of the Common Stock and the applicable Conversion Rate, the Bid Solicitation Agent, on the Company's behalf shall so notify in writing the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee).

(ii) If, prior to the close of business on the Business Day immediately preceding December 1, 2020, the Company elects to:

(A) issue to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period of not more than 60 calendar days after the declaration date of such issuance, to subscribe for or purchase shares of its Common Stock at a price per share that is less than the Closing Sale Price on the declaration date of such issuance; or

(B) distribute to all or substantially all holders of its Common Stock cash, securities or other assets or property (excluding dividends or distributions described in Section 11.04(a)), which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date for such distribution,

then, in either case, the Company shall notify in writing all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) at least 60 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice,

the Notes may be surrendered for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place, even if the Notes are not otherwise convertible at such time, *provided* that a Holder may not surrender any Notes for conversion if the Holder may participate in, at the same time and upon the same terms as holders of Common Stock and solely as a result of holding the Notes, such issuance or distribution without conversion of the Notes as if it held a number of shares of Common Stock equal to the principal amount of such Holder's Notes divided by $1,000 and *multiplied by* the Conversion Rate.

(iii) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Adjustment Event occurs prior to the close of business on the Business Day immediately preceding December 1, 2020, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 12.01, or if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of its assets, pursuant to which the Common Stock would be converted into cash, securities or other assets, the Notes may be surrendered for conversion at any time from or after the date that is 60 Scheduled Trading Days prior to the anticipated effective date of the transaction or event (or, if later, the Business Day after the Company gives notice of such transaction or event) until the 30th Scheduled Trading Day immediately following the actual effective date of such transaction or event or, if such transaction or event also constitutes a Fundamental Change, until the close of business on the second Business Day immediately preceding the related Fundamental Change Repurchase Date. To the extent practicable, the Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) (i) not less than 60 Scheduled Trading Days prior to the anticipated effective date of such transaction or event or (ii) in connection with a Fundamental Change or a Make-Whole Adjustment Event, if the Company does not have knowledge of such transaction or event at least 60 Scheduled Trading Days prior to the anticipated effective date of such transaction or event, within five Business Days of the date upon which the Company receives notice, or otherwise becomes aware, of such transaction or event, but in no event later than the actual effective date of such transaction or event.

(iv) Prior to the close of business on the Business Day immediately preceding December 1, 2020, the Notes may be surrendered for conversion during any calendar quarter commencing after the quarter ending on September 30, 2014, if the Closing Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is more than 130% of the Conversion Price in effect on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after September 30, 2014 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Conversion Agent and the Trustee in writing whether or not the Notes become convertible in accordance with this clause (iv).

Section 11.02. *Conversion Procedure; Settlement Upon Conversion*.

(a) Subject to this Section 11.02, Section 11.03(b) and Section 11.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of Notes being converted, cash **(**"**Cash Settlement**"), shares of Common Stock, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with subsection (j) of this Section 11.02 **(**"**Stock Settlement**") or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with subsection (j) of this Section 11.02 **(**"**Combination Settlement**"), at its election, as set forth in this Section 11.02.

(i) All conversions occurring on a given Conversion Date that occurs prior to the Final Period Date shall be settled using the same Settlement Method. All conversions occurring after the Final Period Date shall be settled using the same Settlement Method.

(ii) Except for any conversions occurring on or after the Final Period Date, the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates.

(iii) If, in respect of any Conversion Date occurring prior to the Final Period Date, the Company elects to deliver a notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date, the Company, through the Conversion Agent, shall deliver such Settlement Notice to the Trustee, the Conversion Agent (if other than the Trustee) and converting Holders no later than the second Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring on or after the Final Period Date, no later than the Final Period Date). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right, with respect to a particular Conversion Date, or the period following the Final Period Date, as applicable, to elect Cash Settlement or Stock Settlement and the Company shall be deemed, with respect to a particular Conversion Date, or the period following the Final Period Date, as applicable, to have elected Combination Settlement in respect of its Conversion Obligation with the Specified Dollar Amount equal to $1,000. Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount. If the Company delivers a Settlement Notice, with respect to a particular Conversion Date, or the period following the Final Period Date, as applicable, electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount in such Settlement Notice, the Specified Dollar Amount, with respect to a particular Conversion Date, or the period following the Final Period Date, as applicable, shall be deemed to be $1,000.

(iv) The Company may, prior to the Final Period Date, at its option, irrevocably elect a Combination Settlement with a particular Specified Dollar Amount for all conversions subsequent to its notice by notice of such election to all Holders of Notes.

(v) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Stock Settlement, the Company shall deliver to the converting Holder a number of shares of Common Stock equal to the product of (1) the aggregate principal amount of Notes to be converted, *divided by* $1,000, *and* (2) the Conversion Rate in effect on the Conversion Date;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 50 consecutive Trading Days during the related Conversion Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall deliver to the converting Holder in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 50 consecutive Trading Days during the related Conversion Period.

(vi) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Conversion Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of any fractional share, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agent shall have no responsibility for any such determination.

(b) Subject to Section 11.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 11.02(h) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds

equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 11.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 11 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 12.02.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (b) above. The Company shall pay or deliver, as the case may be, through the Conversion Agent, the consideration due in respect of the Conversion Obligation (i) if the Company elects Stock Settlement, on the third Business Day immediately following the relevant Conversion Date, unless such Conversion Date occurs on or following the Regular Record Date immediately preceding the Maturity Date, in which case the Company will deliver the relevant consideration on the Maturity Date or (ii) on the third Business Day immediately following the last Trading Day of the Conversion Period, in the case of any other Settlement Method, *provided* that if prior to a relevant Conversion Date the Company's Common Stock has been replaced by Reference Property consisting solely of cash, the Company will pay the consideration due in respect of such Conversion Date on the tenth Business Day immediately following such Conversion Date, and notwithstanding the foregoing, no Conversion Period will apply to such conversions. If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation.

(d) In case any Physical Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax.

(f) Except as provided in Section 11.04, no adjustment shall be made for dividends on any shares issued upon the conversion of any Note as provided in this Article 11.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Global Note Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than canceled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. However, Notes surrendered for conversion during the period from the close of business on any Regular Record Date but prior to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date; or (3) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. As a result of the foregoing, the Company shall pay interest on the Maturity Date on all Notes converted after the Regular Record Date preceding the Maturity Date, and converting Holders will not be required to pay equivalent interest amounts. No other payment or adjustment will be made for accrued interest on a converted Note, other than as set forth in this Supplemental Indenture.

(i) The Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Stock Settlement) or the last Trading Day of the relevant Conversion Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of any fractional share of Common Stock issuable upon conversion based on the Daily VWAP on the relevant Conversion Date (in the case of Stock Settlement) or based on the Daily VWAP on the last Trading Day of the relevant Conversion Period (in the case of Combination Settlement). For each Note surrendered

for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Conversion Period and any fractional shares remaining after such computation shall be paid in cash.

Section 11.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Adjustment Events.* (a) If a Holder elects to convert its Notes from, and including, the effective date of a Make-Whole Adjustment Event to, and including, the Business Day immediately preceding the related Fundamental Change Repurchase Date, or if a Make-Whole Adjustment Event does not also constitute a Fundamental Change, the 30th Scheduled Trading Day immediately following the effective date of such Make-Whole Adjustment Event (such period, the "**Make-Whole Adjustment Event Period**"), the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described below.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Adjustment Event pursuant to Section 11.01(b)(iii), the Company shall, at its option, satisfy the related Conversion Obligation by Stock Settlement, Cash Settlement or Combination Settlement in accordance with Section 11.02; *provided*, *however*, that if, at the effective time of a Make-Whole Adjustment Event described in clause (b) of the definition of Change in Control, the Reference Property following such Make-Whole Adjustment Events is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Adjustment Events, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the tenth Business Day following the Conversion Date. The Company will notify Holders, the Trustee and the Conversion Agent as soon as practicable following the effective date of a Make-Whole Adjustment Event.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased in connection with a Make-Whole Adjustment Event shall be determined by reference to the table below, based on the date on which the Make-Whole Adjustment Event occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Adjustment Event. If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Adjustment Event described in clause (b) of the definition of Change in Control, the Stock Price shall be the cash amount paid or deemed to be paid per share. Otherwise, the Stock Price shall be the average of the Closing Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Adjustment Event. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, during such five consecutive Trading Day period.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted pursuant to Section 11.04. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 11.04.

(e) The following table sets forth the number of Additional Shares of Common Stock to be received per $1,000 principal amount of Notes pursuant to this Section 11.03 for each Stock Price and Effective Date set forth below:

| | Stock Price | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Effective Date** | **$47.75** | **$54.00** | **$60.00** | **$64.46** | **$70.00** | **$75.00** | **$85.00** | **$105.00** | **$130.00** | **$165.00** | **$205.00** | **$250.00** |
| June 18, 2014 | 5.4295 | 4.2375 | 3.3793 | 2.8822 | 2.3881 | 2.0311 | 1.4972 | 0.8613 | 0.4616 | 0.2023 | 0.0748 | 0.0159 |
| June 1, 2015 | 5.4295 | 4.3054 | 3.3975 | 2.8749 | 2.3590 | 1.9888 | 1.4413 | 0.8032 | 0.4154 | 0.1735 | 0.0595 | 0.0096 |
| June 1, 2016 | 5.4295 | 4.3431 | 3.3809 | 2.8314 | 2.2933 | 1.9111 | 1.3535 | 0.7225 | 0.3560 | 0.1392 | 0.0429 | 0.0038 |
| June 1, 2017 | 5.4295 | 4.3432 | 3.3211 | 2.7432 | 2.1834 | 1.7908 | 1.2291 | 0.6188 | 0.2863 | 0.1034 | 0.0277 | 0.0004 |
| June 1, 2018 | 5.4295 | 4.2633 | 3.1747 | 2.5677 | 1.9890 | 1.5910 | 1.0383 | 0.4752 | 0.1988 | 0.0633 | 0.0126 | 0.0000 |
| June 1, 2019 | 5.4295 | 4.0035 | 2.8499 | 2.2213 | 1.6385 | 1.2515 | 0.7431 | 0.2849 | 0.1011 | 0.0273 | 0.0021 | 0.0000 |
| June 1, 2020 | 5.4295 | 3.5567 | 2.2995 | 1.6447 | 1.0744 | 0.7266 | 0.3310 | 0.0772 | 0.0216 | 0.0055 | 0.0000 | 0.0000 |
| June 1, 2021 | 5.4295 | 3.0056 | 1.1538 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 |

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $250.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $47.75 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per $1,000 principal amount of Notes exceed 20.9424 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 11.04.

(f) Nothing in this Section 11.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 11.04 in respect of a Make-Whole Adjustment Event.

Section 11.04. *Adjustment of Conversion Rate.* The Company shall adjust the Conversion Rate from time to time if any of the following events occurs:

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on all or substantially all of the shares of its Common Stock, or if the Company subdivides or combines the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such subdivision or combination, as applicable; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or such Effective Date, as applicable; |
| $OS_0$ | = | the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or such Effective Date, as applicable; and |
| OS' | = | the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution or Common Stock subdivision or combination. |

Any adjustment made under this Section 11.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution (regardless of whether the distribution date is scheduled to occur after the Maturity Date), or immediately after the open of business on the Effective Date for such subdivision or combination of Common Stock, as applicable. If any dividend, distribution or Common Stock subdivision or combination of the type described in this Section 11.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or not to effect such subdivision or combination of Common Stock, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or such subdivision or combination of Common Stock had not been announced.

(b) If an Ex-Dividend Date occurs for a distribution to all or substantially all holders of the Company's Common Stock of any rights, options or warrants entitling them, for a period of not more than 60 calendar days after the announcement date for such distribution, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date; |
| $OS_0$ | = | the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date; |
| X | = | the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and |
| Y | = | the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for the distribution of such rights, options or warrants. |

Any increase made under this Section 11.04(b) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution, regardless of whether the distribution date is scheduled to occur after the Maturity Date. To the extent that such rights, options or warrants expire prior to the Maturity Date and shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants were scheduled to be distributed prior to the Maturity Date and are not so distributed, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not occurred.

For purposes of this Section 11.04(b) and for the purpose of Section 11.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price that is less than the average of the Closing Sale Prices of the Common Stock for each Trading Day in the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

(c) If an Ex-Dividend Date occurs for a distribution of shares of the Company's Capital Stock, evidences of its indebtedness, other assets or property or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 11.04(a) or Section 11.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 11.04(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 11.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the "**Distributed Property**"), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date; |
| $SP_0$ | = | the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and |
| FMV | = | the fair market value (as determined in good faith by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution. |

Any increase made under the portion of this Section 11.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. No adjustment pursuant to the above formula shall result in a decrease of the Conversion Rate. If such distribution is scheduled to be paid or made prior to the Maturity Date and is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "$SP_0$" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, without having to convert its Notes, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If the Board of Directors determines the "FMV" (as defined above) of any distribution for purposes of this Section 11.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 11.04(c) where there has been an Ex-Dividend Date for a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off; |
| $FMV_0$ | = | the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Closing Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period commencing on, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and |
| $MP_0$ | = | the average of the Closing Sale Prices of the Common Stock over the Valuation Period. |

The adjustment to the Conversion Rate under the preceding paragraph shall be determined on the last day of the Valuation Period; *provided* that the Conversion Rate will be given effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any Conversion, references within this Section 11.04(c) to 10 Trading Days shall be deemed to be replaced solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-off to, and including, the last Trading Day of such Conversion Period. In respect of any conversion during the Valuation Period for any Spin-Off, references in this Section 11.04(c) related to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the relevant Conversion Date.

If, following the Valuation Period and prior to the Maturity Date, any dividend or distribution that constitutes a spin-off is declared but not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For purposes of this Section 11.04(c) (and subject in all respect to Section 11.11), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 11.04(c) (and no adjustment to the Conversion Rate under this Section 11.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 11.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Supplemental Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 11.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 11.04(a), Section 11.04(b) and this Section 11.04(c), any dividend or distribution to which this Section 11.04(c) is applicable that also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 11.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 11.04(b) is applicable (the "**Clause B Distribution**"),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 11.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 11.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 11.04(a) and Section 11.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date" within the meaning of Section 11.04(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 11.04(b).

(d) If an Ex-Dividend Date occurs for a cash dividend or distribution to all or substantially all holders of the Common Stock (other than any dividend or distribution in connection with the Company's liquidation, dissolution or winding up), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution; |
| $SP_0$ | = | the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and |
| C | = | the amount in cash per share the Company distributes to all or substantially all holders of its Common Stock. |

Any increase pursuant to this Section 11.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. No adjustment pursuant to the above formula shall result in a decrease of the Conversion Rate. If such dividend or distribution is scheduled to be paid or made prior to the Maturity Date and is not so paid or made, the new Conversion Rate shall be readjusted, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "$SP_0$" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, without having to convert its Notes, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the date such tender or exchange offer expires; |
| CR' | = | the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the date such tender or exchange offer expires; |
| AC | = | the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer; |
| $OS_0$ | = | the number of shares of Common Stock outstanding immediately prior to the time such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); |
| OS' | = | the number of shares of Common Stock outstanding immediately after the time such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and |
| SP' | = | the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires. |

The adjustment to the Conversion Rate under this Section 11.04(e) will be determined at the close of business on the 10th Trading Day immediately following, but excluding, the date such tender or exchange offer expires but will be given effect at the open of business on the Trading Day next succeeding such Expiration Date. If the Trading Day next succeeding such Expiration Date is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references within this Section 11.04(e) to 10 Trading Days shall be deemed to be replaced solely in respect of that conversion, with such lesser number of Trading

Days as have elapsed from, and including, the Trading Day next succeeding such Expiration Date to, and including, the last Trading Day of such Conversion Period. In respect of any conversion during the 10 Trading Days commencing on the Trading Day next succeeding such Expiration Date, references within this Section 11.04(e) to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding such Expiration Date to, but excluding, the relevant Conversion Date. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate.

(f) If:

(i) the Company elects to satisfy its Conversion Obligation through a Combination Settlement and shares of Common Stock are deliverable to settle the Daily Net Share Settlement Number for a given Trading Day within the Conversion Period applicable to Notes converted,

(ii) any distribution, transaction or event described in clauses (a), (b), (c), (d) or (e) of this Section 11.04 has not yet resulted in an adjustment to the Conversion Rate on the Trading Day in question, and

(iii) the shares a Holder will receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related Record Date or otherwise),

then the Company will adjust the number of shares that it delivers to Holders in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

In addition, if:

(i) the Company elects to satisfy its Conversion Obligation through a Stock Settlement,

(ii) any distribution or transaction described in clauses (a), (b), (c), (d) or (e) of this Section 11.04 has not yet resulted in an adjustment to the Conversion Rate on a given Conversion Date, and

(iii) the shares a Holder will receive on settlement of the related conversion are not entitled to participate in the relevant distribution or transaction (because they were not held on a related Record Date or otherwise),

then the Company shall adjust the number of shares that it delivers to Holders in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

Notwithstanding this Section 11.04 or any other provision of this Supplemental Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 11.02(i) based on an adjusted Conversion

Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 11.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 11.04, and to the extent permitted by applicable law and subject to the applicable rules of The NASDAQ Global Select Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of The NASDAQ Global Select Market, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall send to the Holder of each Note at its last address appearing on the Security Register a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) All calculations and other determinations under this Article 11 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share.

(i) Whenever the Conversion Rate is adjusted as herein provided, the Company shall notify Holders of such adjustment as soon as reasonably practicable thereafter and shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall send such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Security Register of the Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(j) Notwithstanding anything to the contrary in this Article 11, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon ordinary course stock repurchases that are not tender or exchange offers referred to in Section 11.04(e), including structured or derivative transactions that do not constitute tender or exchange offers referred to in Section 11.04(e), pursuant to any stock repurchase program approved by the Board of Directors;

(iii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iv) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (iii) of this subsection and outstanding as of the date the Notes were first issued;

(v) solely for a change in the par value of the Common Stock;

(vi) for accrued and unpaid interest, if any; or

(vii) with respect to a given transaction, if the Holders of the Notes will participate in such transaction, without conversion of the Notes, on the same terms and at the same time as a Holder of number of shares of Common Stock equal to the principal amount of a Holder's Notes divided by $1,000 and multiplied by the Conversion Rate would participate.

(k) For purposes of this Section 11.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 11.05. *Adjustments of Prices.* Whenever any provision of this Supplemental Indenture requires the Company to calculate the Closing Sale Prices, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts or the Stock Price for purposes of a Make-Whole Adjustment Event over a span of multiple days (including a Conversion Period and the period for determining the Stock Price for purposes of a Make-Whole Adjustment Event), the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, at any time during the period when such Closing Sale Prices, Daily VWAPs, Daily Conversion Values, Daily Settlement Amounts or Stock Prices are to be calculated.

Section 11.06. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Stock Settlement is applicable).

Section 11.07. *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

(ii) a consolidation, merger, combination, binding share exchange or similar transaction involving the Company;

(iii) a sale, assignment, conveyance, transfer, lease or other disposition to a third party of the consolidated assets of the Company and the Company's Subsidiaries as an entirety or substantially as an entirety; or

(iv) a liquidation or dissolution of the Company,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**"), then, at and after the effective time of such Share Exchange Event, the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive (the "**Reference Property**", with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Share Exchange Event and, prior to or at the effective time of such Share Exchange Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 9.02(h) providing for such change in the right to convert each $1,000 principal amount of Notes; *provided*, *however*, that at and after the effective time of the Share Exchange Event (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 11.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 11.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 11.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Share Exchange Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall

refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders receive only cash in such Share Exchange Event, then for all conversions that occur after the effective date of such Share Exchange Event (x) the consideration due upon conversion of each $1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 11.03), *multiplied by* the price paid per share of Common Stock in such Share Exchange Event and (y) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on the tenth Business Day immediately following the Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 11. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing corporation, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 12.

(b) In the event the Company shall execute a supplemental indenture pursuant to subsection (a) of this Section 11.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly send notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be sent to each Holder, at its address appearing on the Security Register provided for in the Indenture, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 11.07. None of the foregoing provisions shall affect the right of a Holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 11.01 and Section 11.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 11.08. *Certain Covenants.* (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 11.09. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 11.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 11.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01 of the Base Indenture, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 11.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 11.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 11.01(b). The rights, benefits and privileges of the Trustee set forth in the Base Indenture shall be applicable to the Conversion Agent, and the provisions set forth in Section 7.01 and Section 7.02 of the Base Indenture relating to the Trustee shall apply to the Conversion Agent.

Section 11.10. *Notice to Holders Prior to Certain Actions.* In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 11.04 or Section 11.11;

(b) Share Exchange Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of the Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be sent to each Holder at its address appearing on the Security Register, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Share Exchange Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Share Exchange Event, dissolution, liquidation or winding-up. Notices shall be deemed to have been given on the date of such mailing or electronic delivery. Whenever a notice is required to be given pursuant to this Section 11.10, such notice may, at the Company's written request and expense, be given by the Trustee on the Company's behalf (and the Company shall make any notice it is required to give to Holders available on its website). In such event, the Company shall provide the Trustee with the information required by this Section 11.10. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Share Exchange Event, dissolution, liquidation or winding-up.

Section 11.11. *Stockholder Rights Plans.* To the extent that the Company has a rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan so that the Holders would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of the Notes, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 11.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights and subject further to the exception set forth in Section 11.04(j)(vii) with respect to Holders' participating in such transaction.

ARTICLE 12
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 12.01. *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the occurrence of such Fundamental Change at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 12 and will not include any accrued and unpaid interest.

(b) Repurchases of Notes under this Section 12.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depositary's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer), or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall specify the Notes to be repurchased, *provided*, *however*, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 12.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 12.02.

The Paying Agent shall at least weekly and in the three business days prior to the Fundamental Change Repurchase Date, daily, notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 5th Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes and the Trustee and the Paying Agent (in the case of a Paying Agent other than the Trustee) a notice (the "**Fundamental Change Company Notice**") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Adjustment Event, in which case the Fundamental Change Company Notice shall state the Effective Date of the Make-Whole Adjustment Event;

(iii) information about the Holders' right to convert the Notes;

(iv) information about the Holders' right to require the Company to purchase the Notes;

(v) the last date on which a Holder may exercise the repurchase right pursuant to this Article 12;

(vi) the Fundamental Change Repurchase Price;

(vii) the Fundamental Change Repurchase Date;

(viii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes; and

(x) the name and address of the Paying Agent and the Conversion Agent, if applicable.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 12.01.

At the Company's written request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company, and such request must be submitted at least five (5) Business Days prior to the requested date of delivery (unless the Trustee agrees to a shorter period).

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such Fundamental Change Repurchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been canceled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 12.02. *Withdrawal of Fundamental Change Repurchase Notice.* A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, *provided*, *however*, that if the Notes are Global Notes, the notice must comply with appropriate procedures of the Depositary.

Section 12.03. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 2.05 of the Base Indenture) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 12.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 12.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Security Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has

been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than (x) the right to receive the Fundamental Change Repurchase Price and (y) the right of the Holder on such Regular Record Date to receive the corresponding interest payment, if applicable).

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 12.01, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 12.04. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required by law:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;

(b) file a Schedule TO or any successor or similar schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 12 to be exercised in the time and in the manner specified in this Article 12.

## ARTICLE 13
## NO OPTIONAL REDEMPTION

Section 13.01. *Applicability of Article 3 of the Base Indenture*. Article 3 of the Base Indenture and any reference in the Base Indenture to any such Article or the provisions contained therein shall be deemed deleted with respect to the Notes.

Section 13.02. *No Optional Redemption*. The Notes shall not be redeemable by the Company prior to the Maturity Date, and no sinking fund is provided for the Notes.

## ARTICLE 14
## MISCELLANEOUS PROVISIONS

Section 14.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in the Indenture shall bind its successors and assigns whether so expressed or not.

Section 14.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of the Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 14.03. *Governing Law; Jurisdiction.* THIS SUPPLEMENTAL INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Supplemental Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States, in each case located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Supplemental Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 14.04. *Legal Holidays.* In any case where any Interest Payment Date, Fundamental Change Repurchase Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 14.05. *No Security Interest Created.* Nothing in the Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 14.06. *Benefits of Indenture.* Nothing in the Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under the Indenture.

Section 14.07. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Supplemental Indenture have been inserted for

convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 14.08. *Execution in Counterparts.* This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 14.09. *Severability.* In the event any provision of the Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 14.10. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 14.11. *Calculations*. Except as otherwise provided herein, the Company and its agents shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Closing Sale Prices of the Common Stock, accrued interest payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

VERINT SYSTEMS INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Chief Financial Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Banking Officer

**EXHIBIT A**

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

VERINT SYSTEMS INC.

1.50% Convertible Senior Note due 2021

No. [ ] [Initially][1] $400,000,000

CUSIP No. 92343X AA8

VERINT SYSTEMS INC., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][2] [ ][3], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][4] [of $400,000,000][5], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $400,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on June 1, 2021, and interest thereon as set forth below.

This Note shall bear interest at the rate of 1.50% per year, computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month. Interest will accrue from June 18, 2014, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until June 1, 2021. Interest is payable semi-annually in arrears on each June 1 and December 1, commencing on December 1, 2014, to Holders of record at the close of business on the preceding May 15 and November 15 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.04 of the within-mentioned Supplemental Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.04, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes *plus* one percent, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company in accordance with the Indenture.

The Company shall pay the principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and the Corporate Trust Office of the Trustee, as a place where Notes may be presented for payment or for registration of transfer.

---

1 Include if a global note.
2 Include if a global note.
3 Include if a physical note.
4 Include if a global note.
5 Include if a physical note.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

**This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).**

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

VERINT SYSTEMS INC.

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Officer

[FORM OF REVERSE OF NOTE]

VERINT SYSTEMS INC.
1.50% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Notes of the Company, designated as its 1.50% Convertible Senior Notes due 2021 (the "**Notes**"), limited to the aggregate principal amount of $400,000,000 all issued or to be issued under and pursuant to an Indenture dated as of June 18, 2014 (the "**Base Indenture**"), as amended and supplemented by the First Supplemental Indenture dated as of June 18, 2014 (the "**Supplemental Indenture**"; and, with respect to the Notes, the Base Indenture, as amended and supplemented by the Supplemental Indenture, and as it may be further amended or supplemented from time to time, the "**Indenture**") between the Company and Wilmington Trust, National Association, as trustee (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In case an Event of Default, as defined in the Supplemental Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date (if applicable) and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Global Note Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

**SCHEDULE A[6]**

SCHEDULE OF EXCHANGES OF NOTES

VERINT SYSTEMS INC.
1.50% Convertible Senior Notes due 2021

The initial principal amount of this Global Note is FOUR HUNDRED MILLION DOLLARS ($400,000,000). The following increases or decreases in this Global Note have been made:

| Date of exchange | Amount of decrease in principal amount of this Global Note | Amount of increase in principal amount of this Global Note | Principal amount of this Global Note following such decrease or increase | Signature of authorized signatory of Trustee or Global Note Custodian |
|---|---|---|---|---|
| | | | | |

6 Include if a global note.

**ATTACHMENT 1**

[FORM OF NOTICE OF CONVERSION]

To: WILMINGTON TRUST, NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 11.02(d) and Section 11.02(d) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions)with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if
to be issued, and Notes if to

be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):
$ ,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer Identification Number

**ATTACHMENT 2**

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: WILMINGTON TRUST, NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from VERINT SYSTEMS INC. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 12.01 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer
Identification Number

Principal amount to be repaid (if less than all):
$ ,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

**ATTACHMENT 3**

[FORM OF ASSIGNMENT AND TRANSFER]

For value received hereby sell(s), assign(s) and transfer(s) unto (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

**Exhibit 5.1**

**[Jones Day Letterhead]**

June 18, 2014

Verint Systems Inc.
330 South Service Road
Melville, New York 11747

Re: 5,750,000 Shares of Common Stock and $400,000,000 Aggregate Principal Amount of 1.50% Convertible Senior Notes due 2021 and of Verint Systems Inc.

Ladies and Gentlemen:

We have acted as counsel for Verint Systems Inc, a Delaware corporation (the "Company"), in connection with the issuance and sale of (i) 5,750,000 shares (the "Shares") of the Company's common stock, $0.001 par value per share (Common Stock"), pursuant to the Underwriting Agreement, dated as of June 12, 2014 (the "Common Stock Underwriting Agreement"), entered into by and between the Company and Goldman, Sachs & Co., acting as representative of the several underwriters named therein, and (ii) $400,000,000 in aggregate principal amount of 1.50% Convertible Senior Notes due 2021 of the Company (the "Notes" and, together with the Shares, the "Securities") pursuant to the Underwriting Agreement, dated as of June 12, 2014, entered into by and between the Company and Deutsche Bank Securities Inc., acting as representative of the several underwriters named therein. The Notes are being issued pursuant to an indenture (the "Base Indenture"), by and between the Company and Wilmington Trust, National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture (together with the Base Indenture, the "Indenture"), by and between the Company and the Trustee. The Notes are convertible, subject to certain limitations and adjustments set forth in the Indenture, into shares of the Common Stock, cash or a combination of cash and Common Stock (such shares of Common Stock, the "Underlying Shares").

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of such opinions. Based on the foregoing, and subject to further limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The Shares have been authorized by all necessary corporate action of the Company and, when issued and delivered pursuant to the terms of the Common Stock Underwriting Agreement against payment of the consideration therefor as provided therein, will be validly issued, fully paid and nonassessable.

2. The Notes constitute valid and binding obligations of the Company.

3. The Underlying Shares issuable upon conversion of the Notes have been duly authorized and reserved for issuance upon conversion of the Notes by all necessary corporate action of the Company and, when issued upon conversion of the Notes in accordance with the terms of the Notes, will be validly issued, fully paid and nonassessable.

For purposes of the opinions expressed herein, we have assumed that (i) the Trustee has authorized, executed and delivered the Indenture, (ii) the Notes have been duly authenticated by the Trustee in accordance with the Indenture and (iii) the Indenture is the valid, binding and enforceable obligation of the Trustee.

The opinion in paragraph 2 is limited by (i) bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium or other similar laws and related regulations or judicial doctrines from time to time in effect relating to or affecting creditors' rights generally, and (ii) by general equitable principles and public policy considerations, whether such principles and considerations are considered in a proceeding at law or at equity.

The opinions expressed herein are limited to the laws of the State of New York and the General Corporation Law of the State of Delaware, in each case as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Current Report on Form 8-K dated the date hereof and incorporated by reference into the Registration Statement on Form S-3 (Registration No. 333-196612), filed by the Company to effect the registration of the Securities under the Securities Act of 1933 (the "Act"), and to the reference to Jones Day under the caption "Legal Matters" in the prospectuses constituting a part of such Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

**Exhibit 10.1**

**EXECUTION VERSION**

**AMENDMENT NO. 5, INCREMENTAL AMENDMENT AND JOINDER AGREEMENT**

AMENDMENT NO. 5, INCREMENTAL AMENDMENT AND JOINDER AGREEMENT (this "**Agreement**") dated as of June 18, 2014 relating to the Amended and Restated Credit Agreement dated as of April 29, 2011 and amended and restated as of March 6, 2013 (as otherwise heretofore amended or modified, the "**Credit Agreement**") among VERINT SYSTEMS INC., a Delaware corporation (the "**Company**"), the SUBSIDIARY BORROWERS from time to time party thereto, the LENDERS from time to time party thereto, and CREDIT SUISSE AG, as administrative agent (in such capacity, the "**Administrative Agent**") and collateral agent.

**RECITALS:**

WHEREAS, the Company has, by notice to the Administrative Agent (the date of such notice, the "**Notice Date**"), requested a Revolving Credit Commitment Increase in an amount of $100,000,000 to be incurred under clause (y) of the third sentence of Section 2.22(a) of the Credit Agreement.

WHEREAS, the Company intends to issue $400,000,000 of Convertible Notes due 2021 pursuant to Section 7.02(j) of the Credit Agreement and to issue 5,750,000 shares of its Capital Stock (the "**Concurrent Transactions**").

WHEREAS, each financial institution identified on the signature pages hereto as an "Incremental Lender" (each, an "**Incremental Lender**") has agreed severally, on the terms and conditions set forth herein and in the Credit Agreement, to provide a portion of such Revolving Credit Commitment Increase and to become, if not already, a Lender and a Revolving Credit Lender for all purposes under the Credit Agreement (each such Incremental Lender that is not a Revolving Credit Lender immediately prior to the effectiveness hereof, an "**Additional Lender**").

WHEREAS, the financial institutions identified on the signature pages hereto as "Assignors" (each, an "**Assignor**") have agreed severally, on the terms and conditions set forth herein, to assign their respective Revolving Credit Commitments to those financial institutions identified on the signature pages hereto as "Assignees" (each, an "**Assignee**") (collectively, the "**Assignments**").

WHEREAS, immediately after giving effect to such Revolving Credit Commitment Increase and the Assignments, the Revolving Credit Lenders and the Revolving Credit Commitments shall be as set forth on Annex A hereto.

The parties hereto therefore agree as follows:

SECTION 1. *Defined Terms; References.* Unless otherwise specifically defined herein, each capitalized term used herein (including in the preamble and recitals hereto) that is defined in the Credit Agreement has the meaning assigned to such term in the Credit Agreement. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Credit Agreement shall, after this Agreement becomes effective, refer to the Credit Agreement as amended hereby. For the avoidance of doubt, after the Incremental Facility Closing Date (as defined below), any references to "date hereof" or "date of this Agreement" in the Credit Agreement shall continue to refer to March 6, 2013.

SECTION 2. *Revolving Credit Commitment Increase and Extension of the Revolving Credit Termination Date.*

(a) Each Additional Lender shall, with effect from the Incremental Facility Closing Date, become a party to the Credit Agreement as a Revolving Credit Lender with a Revolving Credit Commitment set forth opposite such Additional Lender's name on Annex A hereto, and each other Incremental Lender shall, with effect from the Incremental Facility Closing Date, have a Revolving Credit Commitment set forth opposite such other Incremental Lender's name on Annex A hereto, in each case as such Revolving Credit Commitment may thereafter be changed from time to time pursuant to the terms of the Credit Agreement. Each Additional Lender shall, with effect from the Incremental Facility Closing Date, have the rights and obligations of a Revolving Credit Lender under the Credit Agreement and the other Loan Documents.

(b) Effective on the Incremental Facility Closing Date, each Assignor shall be deemed to have irrevocably sold and assigned to the respective Assignee, and such Assignee shall be deemed to have irrevocably purchased and assumed from such Assignor, all of such Assignor's rights and obligations in its capacity as Revolving Credit Lender under the Credit Agreement and the other Loan Documents, in such respective principal amounts as may be necessary to reflect the allocations set forth for the Revolving Credit Lenders on Annex A hereto. Such sales, assignments, purchases and assumptions shall be deemed to have been effected pursuant to the same terms and conditions as set forth in the form of Assignment and Acceptance attached as Exhibit D to the Credit Agreement. Other than this Agreement and a replacement Revolving Credit Note to be provided to each Assignee in the applicable principal amount, no document or instrument (including any Assignment and Acceptance) shall be required to be executed in connection with any such sale, assignment, purchase and assumption. Each Assignor and the respective Assignee shall make such cash settlements between themselves as they deem necessary and desirable with respect to such sales, assignments, purchases and assumptions. Each of the Administrative Agent, the Company and each Issuing Lender hereby consents to the assignments provided for in this Section 2(b).

(c) The last sentence of the definition of "Revolving Credit Commitment" in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

> The aggregate amount of the Revolving Credit Commitments as of June 18, 2014 is $300,000,000.

(d) The definition of "Revolving Credit Termination Date" in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

> "**Revolving Credit Termination Date**": September 6, 2018; *provided* that if such day is not a Business Day, the Revolving Credit Termination Date shall be the immediately preceding Business Day.

(e) Annex A hereto sets forth each Revolving Credit Lender, and the Revolving Credit Commitment of each Revolving Credit Lender, after giving effect to the Revolving Credit Commitment Increase and the Assignments. The Revolving Credit Commitments of the Revolving Credit Lenders are several and not joint.

(f) Annex A attached to the Credit Agreement is deleted and replaced with Annex A hereto.

SECTION 3. *Representations of the Company*. The Company represents and warrants to the Administrative Agent and each Incremental Lender that:

(a) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents will be true and correct in all material respects (except that any representation and warranty that is qualified by materiality will be true and correct in all respects) on and as of the Incremental Facility Closing Date after giving effect hereto, to any extension of credit requested to be made on the Incremental Facility Closing Date and to the consummation of the Concurrent Transactions as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties will be true and correct in all material respects (except that any representation and warranty that is qualified by materiality will be true and correct in all respects ) as of such date) (for purposes of this representation and warranty, the reference to "Amendment Effective Date" in Section 4.19 of the Credit Agreement will be deemed to refer to the Incremental Facility Closing Date and such representation shall be made immediately after giving effect to any extension of credit (including the Concurrent Transactions) made on the Incremental Facility Closing Date);

(b) no Default or Event of Default existed on the Notice Date and no Default or Event of Default will have occurred and be continuing on and as of the Incremental Facility Closing Date after giving effect hereto, to any extension of credit requested to be made on the Incremental Facility Closing Date and to the consummation of the Concurrent Transactions;

(c) each Loan Party has the corporate power and authority, and the legal right, to make, deliver and perform its obligations under this Agreement and under each of the Loan Documents as amended or supplemented hereby to which it is a party and, in the case of the Company, to borrow hereunder in accordance with the terms and conditions hereof and of the Credit Agreement. Each Loan Party has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and each of the Loan Documents as amended or supplemented hereby to which it is a party and, in the case of the Company, to authorize the borrowings on the terms and conditions of this Agreement and of the Credit Agreement. This Agreement has been duly executed and delivered on behalf of each Loan Party that is a party hereto. This Agreement constitutes, and each other Loan Document as amended or supplemented hereby upon execution will constitute (in each case, assuming due execution by the parties other than the Loan Parties party thereto), a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(d) no consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the borrowings hereunder or the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents as amended or supplemented hereby, except (i) those that have otherwise been obtained or made on or prior to the Incremental Facility Closing Date and which remain in full force and effect on the Incremental Facility Closing Date, (ii) any filings required under the Exchange Act in respect of the transactions contemplated hereby, and (iii) consents, authorizations, filings and notices required under the laws of the jurisdiction of organization of any Foreign Subsidiary in respect of the grant of a security interest in respect of its Capital Stock pursuant to the Guarantee and Collateral Agreement or any other Security Document;

(e) the execution, delivery and performance of this Agreement and the other Loan Documents as amended or supplemented hereby, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law, any Concurrent Transactions or any other material Contractual Obligation of the Company or any of its Subsidiaries and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law, any Concurrent Transactions or any other such material Contractual Obligation (other than the Liens created by the Security Documents); and

(f) immediately after giving effect to the effectiveness of this Agreement, the First Lien Net Leverage Ratio shall not exceed 3.50:1.00, determined on a pro forma basis as of the last day of the most recent fiscal quarter for which financial statements are required to have been delivered under the Credit Agreement, as if the Revolving Credit Commitment Increases had been outstanding and fully drawn on the last day of such fiscal quarter for testing compliance therewith.

SECTION 4. *Conditions to the Incremental Facility Closing Date.* This Agreement shall become effective as of the first date (the "**Incremental Facility Closing Date**") when each of the following conditions shall have been satisfied:

(a) *Representations and Warranties*. The representations and warranties set forth in Section 3 above shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) on and as of the Incremental Facility Closing Date after giving effect hereto and to any extension of credit requested to be made on the Incremental Facility Closing Date.

(b) *This Agreement*. The Administrative Agent shall have received executed counterparts hereof that, when taken together, bear the signatures of the Loan Parties, the Administrative Agent, each Issuing Lender, each Assignor, each Assignee and each Incremental Lender.

(c) *No Default or Event of Default*. No Default or Event of Default shall have occurred and be continuing or shall result from the Revolving Credit Commitment Increase or the consummation of the Concurrent Transactions.

(d) *Officer's Certificate*. The Administrative Agent shall have received a certificate, dated the Incremental Facility Closing Date and signed by a Responsible Officer of the Company, confirming the accuracy of the representations and warranties set forth in Section 3 above and confirming the satisfaction of the conditions in clause (c) above and clause (j) below.

(e) *Solvency Certificate*. The Administrative Agent shall have received a certificate from the chief financial officer of the Company in form substantially consistent with the solvency certificate delivered under the Credit Agreement on the Amendment Effective Date certifying that the Company and its Subsidiaries, on a consolidated basis immediately after giving effect to the Revolving Credit Commitment Increase and any other extensions of credit (including the Concurrent Transactions) made on the Incremental Facility Closing Date and the transactions contemplated hereby, are Solvent.

(f) *Fees*. The Administrative Agent shall have received from the Company a fee for the account of each Incremental Lender in an amount as has been separately agreed between the Administrative Agent and the Company.

(g) *Expenses.* The Administrative Agent shall have received payment or reimbursement of all expenses for which reasonably detailed invoices have been presented (including reasonable fees, disbursements and other charges of counsel to the Administrative Agent) at least one Business Day prior to the Incremental Facility Closing Date, or provision for the payment thereof reasonably satisfactory to the Administrative Agent shall have been made.

(h) *Organizational Documents; Incumbency*. The Administrative Agent shall have received such certificates, resolutions or other documents of the Loan Parties as the Administrative Agent may reasonably require in connection herewith, including all documents and certificates it may reasonably request relating to (i) the organization, existence and good standing of each Loan Party, (ii) the corporate or other authority for and validity of this Agreement and (iii) the incumbency of the officers of each Loan Party executing this Agreement, and other matters relevant hereto, all in form and substance reasonably satisfactory to the Administrative Agent (it being agreed that documents substantially consistent with those delivered under the Credit Agreement on the Amendment Effective Date with appropriate modifications to reflect the consummation of the transactions contemplated hereby will be reasonably acceptable to the Administrative Agent).

(i) *Legal Opinions*. The Administrative Agent shall have received the following executed legal opinions: (i) the legal opinion of Jones Day, counsel to the Company and its Subsidiaries; (ii) the legal opinion of local counsel to the Company in Nevada; and (iii) the legal opinion of local counsel to the Company in The Cayman Islands. Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require and shall be addressed to the Administrative Agent and the Incremental Lenders (it being agreed that legal opinions substantially consistent with those delivered under the Credit Agreement on the Amendment Effective Date with appropriate modifications to reflect the consummation of the transactions contemplated hereby will be reasonably acceptable to the Administrative Agent). The Company hereby requests such counsel to deliver such opinions.

(j) *Concurrent Transactions*. The Concurrent Transactions shall have been consummated (or shall be consummated substantially concurrently with the effectiveness hereof) and the net cash proceeds of the Concurrent Transactions shall have been (or substantially concurrently with the effectiveness hereof shall be) applied to prepay Loans and in connection with entry into one or more derivative transactions with respect to the Company's Capital Stock.

(k) *Letters of Credit*. No Letters of Credit shall be outstanding.

(l) *PATRIOT Act, etc.* The Administrative Agent shall have received, at least three Business Days prior to the Incremental Facility Closing Date, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act and requested by the Administrative Agent in writing (including email) at least seven Business Days prior to the Incremental Facility Closing Date.

SECTION 5. *Acknowledgment of Incremental Lenders.* Each Incremental Lender expressly acknowledges that neither any of the Agents nor any of their Affiliates nor any of their respective officers, directors, employees, agents or attorneys-in-fact have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any

Incremental Lender. Each Incremental Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to provide its Revolving Credit Commitment Increase hereunder and enter into this Agreement and become a Revolving Credit Lender and a Lender under the Credit Agreement. Each Incremental Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under the Credit Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Each Incremental Lender hereby (a) confirms that it has received a copy of the Credit Agreement and each other Loan Document and such other documents (including financial statements) and information as it deems appropriate to make its decision to enter into this Agreement, (b) agrees that it shall be bound by the terms of the Credit Agreement as a Revolving Credit Lender and a Lender thereunder and that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Revolving Credit Lender and a Lender, (c) irrevocably designates and appoints the Agents as the agents of such Incremental Lender under the Credit Agreement and the other Loan Documents, and each Incremental Lender irrevocably authorizes each Agent, in such capacity, to take such action on its behalf under the provisions of the Credit Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to such Agent by the terms of the Credit Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto and (d) specifies as its lending office and address for notices the offices set forth on the Administrative Questionnaire provided by it to the Administrative Agent prior to the date hereof.

SECTION 6. *Governing Law.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. *Confirmation of Guarantees and Security Interests.* By signing this Agreement, each Loan Party hereby confirms that (a) the obligations of the Loan Parties under the Credit Agreement as modified or supplemented hereby (including with respect to the Revolving Credit Commitment Increase contemplated by this Agreement and any Loans or other extensions of credit made thereunder) and the other Loan Documents (i) are entitled to the benefits of the guarantees and the security interests set forth or created in the Guarantee and Collateral Agreement, Security Documents and the other Loan Documents, (ii) constitute "Obligations" and "Secured Obligations" or other similar term for purposes of the Credit Agreement, the Security Documents and all other Loan Documents, (iii) notwithstanding the effectiveness of the terms hereof, the Guarantee and Collateral Agreement, the other Security Documents and the other Loan Documents are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects and (b) each Incremental Lender shall be a "Secured Party", a "Revolving Credit Lender" and a "Lender" (including without limitation for purposes of the definition of "Required Lenders" contained in Section 1.01 of the Credit Agreement) for all purposes of the Credit Agreement and the other Loan Documents. Each Loan Party ratifies and confirms that all Liens granted, conveyed, or assigned to any Agent by such Person pursuant to any Loan Document to which it is a party remain in full force and effect, are not released or reduced, and continue to secure full payment and performance of the Obligations as increased hereby.

SECTION 8. *Credit Agreement Governs*. Except as expressly set forth herein, this Agreement shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of any Lender or Agent under the Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle any Loan Party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances.

SECTION 9. *Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of any executed counterpart of a signature page of this Agreement by facsimile or electronic transmission shall be as effective as delivery of an original counterpart hereof.

SECTION 10. *Miscellaneous.* This Agreement shall constitute an Incremental Amendment and Loan Document for all purposes of the Credit Agreement and the other Loan Documents. The Company shall pay all reasonable fees, costs and expenses of the Administrative Agent incurred in connection with the negotiation, preparation and execution of this Agreement and the transactions contemplated hereby. The Company acknowledges and agrees that the Administrative Agent, each Incremental Lender and each Related Party of any of the foregoing shall be entitled to the benefit of the indemnity provisions of Section 10.05 of the Credit Agreement, as if each such person was included in the definition of "Indemnitee" thereunder, this Agreement was the "Agreement" referred to therein and the transactions contemplated hereunder were the "transactions" referred to therein. To the extent required by the Credit Agreement, each of the Company, each Issuing Lender and the Administrative Agent hereby consent to each Incremental Lender that is not a Lender as of the date hereof becoming a Lender under the Credit Agreement on the Incremental Facility Closing Date. The parties hereto hereby agree that any commitment fees and Letter of Credit participation fees payable on the first payment date therefor to occur after the Incremental Facility Closing Date shall be appropriately adjusted to take into account the Revolving Credit Commitment Increase and the changes to the Revolving Credit Percentages of the respective Lenders.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

VERINT SYSTEMS INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Chief Financial Officer

VERINT VIDEO SOLUTIONS INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

VERINT AMERICAS INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

VERINT WITNESS SYSTEMS LLC

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

VICTORY ACQUISITION I LLC

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

GLOBAL MANAGEMENT TECHNOLOGIES, LLC

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

VERINT SYSTEMS CAYMAN LIMITED

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

KAY TECHNOLOGY HOLDINGS, INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

BROADBASE SOFTWARE, INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

CIBOODLE INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

KANA SOFTWARE, INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

LAGAN TECHNOLOGIES, INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

OVERTONE, INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

SWORD SOFT INC.

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

VERINT ACQUISITION LLC

By: /s/ Douglas E. Robinson
Name: Douglas E. Robinson
Title: Treasurer

[Signature Page to Amendment No. 5, Incremental Amendment and Agreement]

**ADMINISTRATIVE AGENT AND ISSUING LENDER**

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as
Administrative Agent and Issuing Lender

By: /s/ Judith Smith
Name: Judith Smith
Title: Authorized Signatory

By: /s/ Michael D'Onofrio
Name: Michael D'Onofrio
Title: Authorized Signatory

[Signature Page to Amendment No. 5, Incremental Amendment and Agreement]

**INCREMENTAL LENDERS**

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as an Incremental Lender

By: /s/ Judith Smith
Name: Judith Smith
Title: Authorized Signatory

By: /s/ Michael D'Onofrio
Name: Michael D'Onofrio
Title: Authorized Signatory

DEUTSCHE BANK TRUST COMPANY AMERICAS, as an Assignor

By: /s/ Kirk Tashjian
Name: Kirk Tashjian
Title: Vice President

By: /s/ Peter Cucchiara
Name: Peter Cucchiara
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH, as an Incremental Lender and an Assignee

/s/ Kirk Tashjian
Name: Kirk Tashjian
Title: Vice President

/s/ Peter Cucchiara
Name: Peter Cucchiara
Title: Vice President

[Signature Page to Amendment No. 5, Incremental Amendment and Joinder Agreement]

ROYAL BANK OF CANADA, as an Incremental Lender and Issuing Lender

By: /s/ Nicholas Heslip
Name: Nicholas Heslip
Title: Authorized Signatory

[Signature Page to Amendment No. 5, Incremental Amendment and Agreement]

BARCLAYS BANK PLC, as an Incremental Lender

By: /s/ Irina Dimova
Name: Irina Dimova
Title: Vice President

[Signature Page to Amendment No. 5, Incremental Amendment and Joinder Agreement]

HSBC BANK USA, N.A., as an Incremental Lender

By: /s/ William Conlan
Name: William Conlan
Title: Senior Vice President

[Signature Page to Amendment No. 5, Incremental Amendment and Joinder Agreement]

JPMORGAN CHASE BANK, N.A., as an Incremental Lender

By: /s/ Justin Kelley
Name: Justin Kelley
Title: Vice President

[Signature Page to Amendment No. 5, Incremental Amendment and Joinder Agreement]

**ANNEX A**

## Revolving Credit Commitments

| Revolving Credit Lender | Revolving Credit Commitment | |
|---|---|---|
| Credit Suisse AG, Cayman Islands Branch | $ | 50,000,000 |
| Deutsche Bank AG New York Branch | $ | 50,000,000 |
| Royal Bank of Canada | $ | 50,000,000 |
| Barclays Bank PLC | $ | 50,000,000 |
| HSBC Bank USA, N.A. | $ | 50,000,000 |
| JPMorgan Chase Bank, N.A. | $ | 50,000,000 |
| **Total:** | **$** | **300,000,000** |

**Exhibit 99.1**

*Press Release*

**Contact:**
**Investor Relations**
Alan Roden
Verint Systems Inc.
(631) 962-9304
alan.roden@verint.com

**Verint Announces Closing of Concurrent Underwritten Public Offerings of Common Stock and Convertible Senior Notes**

**MELVILLE, N.Y., June 18, 2014 – Verint® Systems Inc.** (NASDAQ: VRNT) today announced the closing of its concurrent public offerings of 5,750,000 shares of its common stock (including 750,000 shares issued to the underwriters in that offering pursuant to the exercise in full of their option to purchase additional shares on June 13, 2014) and $400 million aggregate principal amount of its 1.50% convertible senior notes due 2021 (including $50 million aggregate principal amount of notes issued to the underwriters in that offering pursuant to the exercise in full of their option to purchase additional notes on June 13, 2014).

"We are pleased to have successfully completed our concurrent offerings. Following the offerings, we have reduced our combined revolver and term loan balance to approximately $411 million and reduced our annual non-GAAP interest expense from approximately $40 million to approximately $24 million. The offerings will slightly reduce our previously issued non-GAAP fully diluted earnings per share guidance for the year ending January 31, 2015 by approximately 4 cents," said Doug Robinson, Verint's Chief Financial Officer.

For the common stock offering, Goldman, Sachs & Co. and Deutsche Bank Securities acted as lead joint book-running managers, Credit Suisse, J.P. Morgan, RBC Capital Markets, Barclays, and Jefferies acted as joint book-running managers, and FBR, Oppenheimer & Co. and Imperial Capital, LLC acted as co-managers. For the convertible notes offering, Deutsche Bank Securities and Goldman, Sachs & Co. acted as lead joint book-running managers, Credit Suisse, RBC Capital Markets, Barclays, and HSBC acted as joint book-running managers, and Centerview Capital acted as advisor.

The notes bear interest at a rate of 1.50% per year, payable semi-annually in arrears, and will mature on June 1, 2021, unless repurchased or converted in accordance with their terms prior to that date. The notes are convertible into cash, shares of Verint's common stock, or a combination of both, at Verint's election, subject to satisfaction of certain conditions and during certain periods. Upon conversion, Verint currently intends to pay cash in respect of the principal amount. The initial conversion rate of the notes is 15.5129 shares per $1,000 principal amount of notes, which is equal to a conversion price of approximately $64.46 per share, subject to adjustment in certain circumstances. As a result of the convertible note hedge and warrant transactions described below, the effective conversion price for the notes is $75.00 per share, which represents approximately a 57% premium to the concurrent common stock offering price of $47.75 per share. The notes are not guaranteed by any of Verint's subsidiaries.

The aggregate net proceeds from the concurrent offerings were approximately $656.8 million, after deducting underwriters' discounts and commissions, but without giving effect to the cost of the convertible note hedge transactions described below, the proceeds from the warrant transactions described below, or other offering expenses. Verint used approximately $15.6 million of net proceeds to pay the costs of the related convertible note hedge transactions (after such cost was partially offset by the proceeds to Verint from the related warrant transactions). Verint used the remainder of the net proceeds from the concurrent offerings to repay a portion of the outstanding indebtedness under its existing credit facility.

In connection with the issuance of the notes, Verint entered into convertible note hedge transactions with dealer affiliates of certain of the notes offering underwriters. The convertible note hedge transactions cover, subject to customary anti-dilution adjustments, the number of shares of Verint's common stock that initially underlie the notes. Verint also entered into separate privately negotiated warrant transactions with such dealers or their affiliates. The

convertible note hedge and warrant transactions are expected to reduce the potential dilution with respect to Verint's common stock upon conversion of the notes; however, the warrant transactions could have a dilutive effect with respect to Verint's common stock to the extent that the market price per share of Verint's common stock exceeds the strike price of the warrants.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities nor shall there be any sale of any security in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**About Verint**

Verint® (NASDAQ: VRNT) is a global leader in Actionable Intelligence® solutions. Actionable Intelligence is a necessity in a dynamic world of massive information growth because it empowers organizations with crucial insights and enables decision makers to anticipate, respond, and take action. Our Actionable Intelligence solutions help organizations address three important challenges: Customer Engagement Optimization; Security Intelligence; and Fraud, Risk, and Compliance. Today, more than 10,000 organizations in over 180 countries, including over 80 percent of the Fortune 100, use Verint solutions to improve enterprise performance and make the world a safer place.

**Cautionary Note Regarding Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of the securities laws. The statements in this press release regarding Verint's current expectations and beliefs as to the pricing and closing of the offerings of common stock and notes and uses of proceeds thereof, as well as other statements that are not historical facts, are forward-looking statements. Forward-looking statements are estimates and projections reflecting management's judgment based on currently available information and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. All information set forth in this release is as of the date set forth above. Verint does not intend, and undertakes no duty, to update this information to reflect future events or circumstances, except as required by law. Information about certain potential factors that could cause actual results to differ materially from those expressed or implied in any forward-looking statements are included from time to time in Verint's filings with the SEC, including those discussed in Verint's Annual Report on Form 10-K for the year ended January 31, 2014 and Verint's Quarterly Report on Form 10-Q for the three months ended April 30, 2014.

**About Non-GAAP Financial Measures**

This press release includes information regarding forecasted non-GAAP interest expense and non-GAAP earnings per share, which are financial measures that are not prepared in accordance with generally accepted accounting principles in the United States ("GAAP"). These non-GAAP financial measures should not be considered as a substitute for GAAP interest expense or GAAP earnings per share. The non-GAAP financial measures Verint presents have limitations in that they do not reflect all of the amounts associated with its results of operations as determined in accordance with GAAP, and these non-GAAP financial measures should only be used to evaluate the its results of operations in conjunction with the corresponding GAAP financial measures. These non-GAAP financial measures do not represent discretionary cash available to Verint to invest in the growth of its business, and Verint may in the future incur expenses similar to the adjustments made in these non-GAAP financial measures.

Verint believes that the non-GAAP financial measures it presents provide meaningful supplemental information regarding its operating results primarily because they exclude certain non-cash charges or items that Verint does not believe are reflective of its ongoing operating results when budgeting, planning and forecasting, determining compensation and when assessing the performance of its business with its individual operating segments or its senior management. Verint believes that these non-GAAP financial measures also facilitate the comparison by management and investors of results between periods and among its peer companies. However, those companies may calculate similar non-GAAP financial measures differently than Verint does, limiting their usefulness as comparative measures.

Because Verint does not predict special items that might occur in the future, and Verint's outlook is developed at a level of detail different than that used to prepare GAAP financial measures, Verint is not providing a reconciliation to GAAP of its forward-looking financial measures for the year ending January 31, 2015.

***Adjustments Reflected in Non-GAAP Financial Measures***

*Revenue adjustments related to acquisitions*. Verint excludes from its non-GAAP revenue the impact of fair value adjustments required under GAAP relating to acquired customer support contracts which would have otherwise been recognized on a standalone basis. Verint excludes these adjustments from its non-GAAP financial measures because these are not reflective of its ongoing operations.

*Amortization of acquired intangible assets, including acquired technology and backlog*. When Verint acquires an entity, it is required under GAAP to record the fair values of the intangible assets of the acquired entity and amortize those assets over their useful lives. Verint excludes the amortization of acquired intangible assets, including acquired technology and backlog, from its non-GAAP financial measures. These expenses are excluded from the non-GAAP financial measures because they are non-cash charges. In addition, these amounts are inconsistent in amount and frequency and are significantly impacted by the timing and size of acquisitions. Thus, Verint also excludes these amounts to provide better comparability of pre- and post-acquisition operating results.

*Stock-based compensation expenses*. Verint excludes stock-based compensation expenses related to stock options, restricted stock awards and units, stock bonus plans and phantom stock from its non-GAAP financial measures. These expenses are excluded from the non-GAAP financial measures because they are primarily non-cash charges.

*M&A and other adjustments*. Verint excludes from its non-GAAP financial measures legal, other professional fees and certain other expenses associated with acquisitions, whether or not consummated, and certain extraordinary transactions, including reorganizations and restructurings. Also excluded are changes in the fair value of contingent consideration liabilities associated with business combinations. These expenses are excluded from the non-GAAP financial measures because Verint believes that they are not reflective of its ongoing operations.

*Unrealized (gains) losses on derivatives, net*. Verint excludes from its non-GAAP financial measures unrealized gains and losses on foreign currency derivatives not designated as hedges. These gains and losses are excluded from the non-GAAP financial measures because they are non-cash transactions which are highly variable from period to period and which Verint believes are not reflective of its ongoing operations.

*Loss on extinguishment of debt*. Verint excludes from its non-GAAP financial measures loss on extinguishment of debt attributable to refinancing or repaying debt because Verint believes it is not reflective of its ongoing operations.

*Non-cash tax adjustments*. Verint excludes from its non-GAAP financial measures non-cash tax adjustments, which represent the difference between the amount of taxes it expects to pay related to current year income, and its GAAP tax provision on an annual basis. On a quarterly basis, this adjustment reflects Verint's expected annual effective tax rate on a cash basis.

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